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THE

GAME LAWS OF ENGLAND:

WITH AN APPENDIX OF

THE STATUTES RELATING TO GAME.

BY

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PREFACE.

SINCE 1828, from which period the series of statutes which at present constitutes the Game Laws dates, various useful treatises have been written upon the subject, but, as far as the present writer is aware, no such work has appeared in a comprehensive form for many years. It has, therefore, been the author's object in this small text-book to collect and bring up to date the statutes passed, and the cases decided in connection with this subject, and thus, it is hoped, to afford some aid to those whose duty or interest it may be to come to a conclusion upon questions of sporting rights.

As the reader will probably be aware, the chief statutory changes in the Game Laws of late years have been the Ground Game Act, which has materially affected the relative position of landlords, tenants and their grantees, certain Excise provisions with regard to licences, and the series of Wild Birds Protection Acts, which, while they have afforded protection to many useful and ornamental creatures, have also, it

is said, caused an undue increase in many places of others that are destructive.

But it will be seen also that in many branches of the law cases have been more or less recently decided of great importance to game preservers and their servants.

No one who has taken the matter into consideration can have failed to observe that in recent times the character of game preserving has changed from a right jealously guarded to a business completely organized, and that the game is, in many districts, one of the most valuable assets of the landed proprietor. The author has therefore drawn more particular attention to the cases dealing with the grant and reservation of sporting rights, and to the duties and liabilities of sporting tenants.

It is hoped that the whole subject will be found treated of in a form at once convenient and useful, and that any shortcomings, which it has been the writer's earnest endeavour to make as few as possible, will be overlooked.

In conclusion, the author wishes to express his sense of indebtedness to the editors of Oke's "Game Laws" and Oke's "Magisterial Synopsis" for the great assistance afforded to him by their works.

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THE GAME LAWS OF ENGLAND.

INTRODUCTORY.

The following work, it must be clearly understood, deals only with the game laws of England and Wales.

The expression "game laws" signifies a series of statutes, all of comparatively recent date, which establish a qualified property in certain wild animals known as game. As will be seen from the remarks in Chapter I., the common law recognized no property in animals *feræ naturæ*, until they had been reduced into physical possession, and trespass in pursuit of wild animals on another's land was, under the common law, merely a civil wrong.

The forest laws, which protected the privilege of the king to hunt certain animals in certain districts, first established a difference between game and other wild animals not the object of sport, and the game laws have extended this protection to private owners of land by punishing as a criminal offence trespass in

pursuit of such birds and animals as are constituted game by those statutes, and by limiting the right of killing and selling game by a system of licences. The following are the principal Acts dealing with game.

The Game Act, 1831 (1 & 2 Will. 4, c. 32), practically defines what is game, and whilst recognising forestal and free-warren rights, establishes as presumption of law the tenant's right to kill the game on his land. It also fixes close times for its preservation, appoints licences for the sale of it, and penalties for killing it without an excise licence. Lastly, the trespass clauses impose penalties on persons who trespass in pursuit of game by day, and prescribe the circumstances under which they are liable to arrest.

The Night Poaching Acts, 1828 (9 Geo. 4, c. 69), and 1844 (7 & 8 Vict. c. 29), contain very severe enactments against trespassers in pursuit of game by night, and also determine the circumstances under which such offenders may be arrested and prosecuted.

The Poaching Prevention Act, 1862, calls in the aid of the civil arm by enabling the police to stop poachers and search them on the highways.

The provisions of the inland revenue as to excise licences to kill and sell game are con-

tained in the Game Licence Act, 1860 (23 & 24 Vict. c. 90), and as to carrying a gun, in the Gun Licence Act, 1870 (33 & 34 Vict. c. 27).

The Ground Game Act, 1880 (43 & 44 Vict. c. 47), defines the relative positions of landlords and tenants with regard to the hares and rabbits; and lastly, the Wild Birds Protection Acts, 1880 (43 & 44 Vict. c. 35), 1881 (44 & 45 Vict. c. 51), and 1894 (57 & 58 Vict. c. 24), protect during the breeding season a great number of birds, which are the common object of sport, and their eggs.

CHAPTER I.

GAME AND PROPERTY IN GAME.

Game defined.—"The word 'game' is an indefinite word, and seems at various times to have had various meanings," says Erle, J., in *Jeffryes* v. *Evans* (34 L. J. C. P. 261, 263). In popular language, game may, perhaps, be said to be those animals which are the object of sport; but there is no general definition of the word, which holds good in the consideration of the various statutes passed to protect it. Each statute has its own definition, and although "game" will be used throughout the work in the popular sense above quoted, when treated of generally, when considered in connection with any statute, the attention of the reader will be drawn to the particular meaning, which that statute gives it. Thus, the Game Act, 1831, s. 2, defines game for the purposes of that Act as including hares, pheasants, partridges, grouse, heath or moorgame, blackgame, and bustards, and the Night Poaching Act, 1828, has the same definition; but the Poaching Prevention Act, 1862, makes it include, beside the above beasts and birds, woodcocks, snipes, and rabbits, and the eggs of pheasants, partridges, grouse, black or moorgame.

Again, by the Game Licence Act, 1860, a licence to kill game must be procured by persons intending to

kill woodcock, snipe, quail, landrail, rabbits or deer, besides hares, pheasants, partridges, &c. made game by the Game Act, 1831.

Questions also arise, when it becomes necessary to consider the statutes, which regulate the buying and selling of game, whether game as therein referred to includes game imported from abroad.

Before proceeding to notice the provisions of the various statutes relating to particular beasts and birds made game by those statutes and the means devised for their protection, it will be convenient to notice in whom the property in such wild animals vests, and what is the nature of such property under the common law. The following observations are deduced from the cases extant on the subject, and, whilst the decisions on some points connected with this matter are fairly clear, the subject as a whole seems more complex, the more inquiry is made into it.

Property in wild game.—Game forms part of the class of animals *feræ naturæ* fit for the food of man. There is no absolute right of property in any such wild animal until it has been reduced into possession by being taken or reclaimed. The common law of England has, however, recognized a qualified or special right of property in game, and "this qualified right of property means no more than the exclusive right to catch, kill, and appropriate such animals, *i. e.*, to reduce them into possession."

"This right is said in law to exist *ratione soli* or *ratione privilegii*. . . . Property *ratione soli* is the common law right, which every owner of land has, to kill and take all such animals *feræ naturæ*, as may from

time to time be found on his land, and as soon as this right is exercised, the animal so caught and killed becomes the absolute property of the owner of the soil. Property *ratione privilegii* is the right which, by a peculiar franchise anciently granted by the Crown in virtue of its prerogative, one man had of killing and taking animals *ferœ naturœ* in the land of another; and in like manner, the game, when killed or taken by virtue of the privilege, became the absolute property of the owner of the franchise": *per* Lord Westbury, L. C., *Blades* v. *Higgs*, 11 H. L. C. at p. 631; 34 L. J. C. P. 286; 12 L. T. N. S. 615.

The effect of this doctrine is that owners of land and the grantee of a privilege, *e.g.*, a free-warren (see p. 17), have the right to kill or take game whilst remaining upon the soil, and the property in such game, when started and killed upon the soil or within the free-warren by trespassers, continues in the owner or grantee: *Sutton* v. *Moody*, 1 Ld. Raymond, 250. And an action of trover will lie at the suit of the owner of land or franchise for game started and killed upon such land by trespassers: *Lonsdale* v. *Rigg*, 1 H. & N. 923; 26 L. J. Ex. 196; *Blades* v. *Higgs*, *supra*. In the first of these two cases, Lord Lonsdale recovered in trover certain grouse which the defendant had killed on lands over which he had merely a right of common. The Exchequer Chamber held that such right of common gave the defendant no right to the possession of the soil, and that, as the ownership of the soil remained in the plaintiff as lord of the manor, the grouse belonged to him.

In the case of *Blades* v. *Higgs*, the plaintiff, a game-dealer, brought an action against a servant of the

Marquis of Exeter for taking from him a number of dead rabbits, which he had bought from persons who had taken them by poaching on the Marquis' land shortly before; and the House of Lords, affirming the Courts below, justified the taking of the rabbits from the plaintiff on the grounds above stated, *i.e.*, that game started and killed on land by trespassers is the property of the owner of the land.

Owners of a franchise, *e.g.*, a free-warren or chase (see p. 14), have also, it is said (*Sutton* v. *Moody*, 1 Ld. Raym. 250; Holt's Cases, 18), not only a property in game started and killed by trespassers within the warren or chase, but also in all such birds and beasts of warren and chase as are hunted by trespassers from the warren into other lands, and killed there, because the privilege of the franchise attaches to such animals. Save and except, however, where game is both started and killed on one person's land, or is hunted from a free-warren, the general rule of law seems to be that the property is in the captor, whoever he may be: *per* Powell, J., 11 Mod. Rep. 75. Thus where C., a trespasser, hunted a hare from B.'s land into A.'s land, and killed it there, he was held justified in maintaining an action against A. for taking away the hare: *Churchward* v. *Studdy*, 14 East, 249; *Sutton* v. *Moody*, 1 Ld. Raym. 250; Holt's Cases, 18. But it cannot be said that this rule of law is satisfactory, and, indeed, it has been doubted; see the remarks of Lord Chelmsford in *Blades* v. *Higgs* (11 H. L. C., at p. 639), where he points out that it is a peculiar doctrine that the act of a trespasser should deprive not only B. but also A. of the property in the game, which would have been B.'s if it had remained where it was found, and B. had killed it,

and would have been A.'s if it had, in the ordinary course of nature, passed into his land, and been killed by him.

The qualified rights which the possessors of land have to take the wild animals found upon it, are protected by the law of trespass and the provisions of the Game Statutes, and although the property in captured game is said to vest in certain persons, those persons can only assert their rights subject to an action or prosecution for trespass in pursuit of game if they are trespassers in pursuit of game, and if so certain game can be seized if found upon them recently killed. (Game Act, 1831, s. 36.)

No person is justified in intentionally pursuing game started on his own land over his neighbour's boundary: *Deane* v. *Clayton*, 7 Taun. 489; see also *Kenyon* v. *Hart*, 34 L. J. M. C. 87; 11 L. T. 733; 6 B. & S. 249; *Osbond* v. *Meadows*, 31 L. J. M. C. 238; 6 L. T. N. S. 290; and if he enter his neighbour's land to pick up game which has fallen dead there, he is liable to an action for trespass: *Tanton* v. *Jervis*, 43 J. P. 784; see p. 78.

Larceny of wild game.—It must be quite clear from the foregoing remarks that wild game, when alive, is never a personal chattel, and capable of being feloniously stolen, for no person has an absolute property in it, but merely a qualified right under certain circumstances to capture it. The very existence of the Game Statutes shows that the law of larceny does not apply to such a property when alive. Again, although when dead it may be the subject of an action of trover, it by no means follows that even then it is such a chattel that

the person, who takes it unlawfully and carries it away, can be prosecuted for larceny. It remains, therefore, to consider how far the Game Statutes extend, and under what circumstances wild game becomes, when dead, the subject of larceny.

In order to constitute larceny, the thing feloniously stolen, taken, and carried away, must be a chattel; and dead game, in order to become a chattel, must have been reduced into possession, and the act of taking and carrying it away, when so reduced, in order to be larceny, and not merely an act of poaching, must be a separate transaction from that which so reduced it.

This is clearly expressed by Bovill, C. J., in *R.* v. *Townеley*, L. R. 1 C. C. R. 315; 40 L. J. M. C. 144. In this case poachers killed a number of rabbits on an estate, and placed them in a bag in a ditch, having no intention of abandoning them, but merely for security until they could remove them. After three hours one of them returned and began to remove the rabbits. He was charged with larceny, but the Court held that the taking of the rabbits and removal of them were one continuous act, and that the prisoner could not be charged with larceny, and Bovill, C. J. said, "In animals *feræ naturæ* there is no absolute property. There is only a special or qualified right of property—a right, *ratione soli*, to kill and take them: when killed upon the soil, they become the absolute property of the owner of the soil. . . . In this case, therefore, the rabbits being started and killed on land belonging to the Crown might, if there were no other circumstances in the case, become the property of the Crown. But before there can be a conviction for larceny for taking anything not capable in its original

state of being the subject of larceny, as for instance, things fixed to the soil, it is necessary that the act of taking away should not be one continuous act with the severance, or other act by which the thing becomes a chattel, and so is brought within the law of larceny. And the present case must be governed by the same principle": cf. *Osbond* v. *Meadows*, 31 L. J. M. C. 238.

If, however, the poacher kill the game, abandon possession of it, and, having allowed such an interval to elapse as to negative the presumption that the killing and taking are one continuous act of trespass in pursuit of game, then subsequently remove it, *semble*, it would be larceny: 1 Hale, P. C. 510; *R.* v. *Townley*, *supra*. *A fortiori*, it is larceny to unlawfully take and carry away dead game which has been reduced into possession by persons unconnected with the poacher, *e. g.*, from a larder, or from a game cart, where it has been placed by the keeper for carriage homeward at the end of a day's sport.

It is a question for the Court to determine whether game has been reduced into the possession of a particular person or not.

Thus, a partridge which alights in a neighbouring field mortally wounded, but not dead, is clearly not reduced into the possession of the person who wounded it: *R.* v. *Roe*, 22 L. T. N. S. 414.

Where a prisoner had been employed to trap wild rabbits, and it was his duty to take them when trapped to the head keeper, but he caught them and placed them in a bag and hid them, and a keeper seeing them, nicked them for subsequent identification and left them; it was held that such nicking was not a reduction into

the possession of the keeper's master, when the prisoner subsequently removed the rabbits intending to appropriate them; and further, that although the prisoner was authorized to trap rabbits, these particular rabbits were trapped for his own use, and were not, therefore, reduced into his master's possession by him: *R.* v. *Petch*, 38 L. T. N. S. 788.

Where a keeper not authorized to take or kill rabbits for his own use, killed some on his master's lands and converted them to his own use, and the taking, killing, removing, and selling were parts of one continuous action, it was held that a conviction of such keeper for embezzlement of the rabbits could not be sustained, for he never received the rabbits "for or on account of his master" (24 & 25 Vict. c. 96, s. 68): *R.* v. *Read*, 3 Q. B. D. 131.

Where dead game is the subject of larceny it should be described as such in an information or indictment for stealing it, thus, "one dead pheasant," &c.: *R.* v. *Edwards*, Russ. & R. 498.

Property in eggs of wild game.—The eggs of game laid by them whilst wild are not the property of the owner of the soil in the sense that he can prosecute persons, who take them out of the nest, for larceny; but the game laws intervene to protect certain of them against trespassers. Thus, the Game Act, 1831, s. 24, makes it an offence for any person who has not the right to kill the game on certain land to take out of the nest the eggs of pheasants, partridges, grouse, heath and moorgame, blackgame, bustards, swans, wild ducks, teal, and widgeon (see Chap. IX.), and the eggs of some of these birds are included in the

definition of game in the Poaching Prevention Act, 1862.

Orders also may from time to time be made by the Secretary of State affording protection to the eggs of wild birds within certain times and areas (Wild Birds Protection Act, 1894); but save under this statute and the above-mentioned provisions of the Game Act, the only remedy which a person has against trespassers, who take the eggs of wild game from his land, is an action for trespass.

Property in game when reclaimed.—All beasts and birds of game fit for food, when reclaimed and confined, are the subject of larceny: thus, pheasants or partridges kept in a pen (*R.* v. *Head*, 1 F. & F. 350); young pheasants hatched by the hen, and under the care of the hen in a coop, although the coop is in an open field and the pheasants are ultimately destined to be turned out (*R.* v. *Cory*, 10 Cox, C. C. 23); partridges hatched three weeks and sleeping under the wings of a fowl at night, though not confined in a coop, have all been held to be the subjects of larceny: *R.* v. *Shickle*, L. R. 1 C. C. R. 158; 38 L. J. M. C. 21.

The test of whether game is reclaimed or not seems to be whether it is practically under the care and dominion of the prosecutor: *R.* v. *Shickle*, *supra*. Thus, pigeons, although they have free access to the air, are considered tame if they return to their house or box every night: *R.* v. *Brooks*, 4 C. & P. 131; see p. 250; and deer which roam about a park but come to be fed are tame: see "Deer." On the other hand, hares and rabbits bred in a warren are wild, though they are specially protected by sect. 17 of the Larceny Act.

Hares and rabbits kept in hutches are, of course, considered tame. The products also of all reclaimed game fit for food would be the subject of larceny, *e.g.*, their eggs, and their flesh when dead: *R.* v. *Gallears*, 1 Den. 501; 19 L. J. M. C. 13. In an information or indictment for larceny the animal should be described as tame: thus, "one tame partridge," "six eggs of one tame pheasant," &c.

As to property in, malicious injury to, and larceny of domestic animals, and swans, pigeons, rooks, poultry, see Chap. XXI.

CHAPTER II.

SPORTING PRIVILEGES.

At common law the qualified right to take the game on lands, as a general rule, belongs to the owner of those lands, see Chapter I; if he demise them, it belongs to the tenant by virtue of his property in the soil: *Moore* v. *Earl of Plymouth*, 7 Taunt. 614; but as the ownership of land finds its source in tenure of the Crown, so there are various privileges of taking game on lands which owe their origin to royal grants. Before considering the various rights and duties of owners and occupiers with respect to the game, it will be convenient to notice these privileges, their nature, and effect.

Manors.—The lord of a manor or reputed manor (defined, p. 145), as such, has no privileges at common law with respect to the game in the manor, such privileges as he has are statutory powers, or immunities granted him for the better preservation of game to which he is entitled as owner of the manor lands; thus, no lord of a manor can be prosecuted for trespass in pursuit of game on the manor (Game Act, 1831, ss. 30, 35); and he can appoint gamekeepers for the preservation of game which he has a right to kill, by appointment or deputation, which gives his appointed or deputed servant slightly larger powers than an ordinary servant would possess: see p. 146. He has no right merely as lord to sport over the freehold lands of the manor,

unless he has a right of free-warren (*vide infra*): *Bruce* v. *Helliwell*, 29 L. J. Ex. 297; 5 H. & N. 609, 620; Elton on Copyholds, p. 238; and he can be sued for trespass if he does so: *Pickering* v. *Noyes*, 4 B. & C. 639. By ancient reservation or custom he may have a right to sport over the copyholds of the manor, and if such a custom exists in a manor an enfranchisement of the manor under the Copyhold Acts will not deprive him of the right (57 & 58 Vict. c. 43, s. 23); but beyond the above statutory favours and local custom, the rights of the lord are no more and no less than those of any other owner of lands.

Wastes of the manor.—The wastes of a manor are those lands of the manor which are not in the hands of the lord himself or copyhold or freehold tenants of the manor. The lord has, by virtue of his ownership of the soil, the right to take game upon the wastes: *Greathead* v. *Morley*, 3 Scott, N. R. 538.

Persons having rights of common or cattle-gates on the wastes of a manor merely have a right to eat the herbage by their cattle: *Cooper* v. *Marshall*, 1 Burr. 259. They have no right to take the game on the commons (Game Act, 1831, s. 10): *Watkins* v. *Major*, 44 L. J. M. C. 164; and the lord can maintain an action of trespass against them if they do so: *Lonsdale* v. *Rigg*, 26 L. J. Ex. 196; 1 H. & N. 923; nor are they occupiers within the meaning of the Ground Game Act, 1880, see s. 1 (2), and therefore cannot claim to take ground game on the common under that Act. If the pasturage for their cattle is diminished by the excessive number of the rabbits kept by the lord on the common, though they may not destroy the rabbits or dig out the

burrows, they have a right of action against the lord for damages: *Cooper* v. *Marshall*, *supra*.

The right to kill and take the game on another's land, being a profit *à prendre*, can be acquired only by grant under seal (*Bird* v. *Higginson*, 2 A. & E. 696); or by prescription; it cannot be claimed under the Prescription Act (2 & 3 Will. 4, c. 71) in gross, by a person as being in himself or his ancestors, or if a corporation, in its predecessors, but only where there is a dominant and servient tenement: *Shuttleworth* v. *Le Fleming*, 19 C. B. N. S. 687; *Cornwell* v. *Sanders*, 32 L. J. M. C. 6. And no right to sport on another's land by custom can be claimed by any person or body of persons, except by copyholders against their lord, under the custom of the manor: *Mellor* v. *Spateman*, 1 Wms. Saund. 340 c, n. 3; *R.* v. *Churchill*, 4 B. & C. 755; *per* Holroyd, J., *Hanmer* v. *Chance* (34 L. J. Ch. 413), "and it has been held as undoubted law for two centuries that no such custom, as that the inhabitants of a place should have a profit *à prendre* in the soil of another, can exist in law"; *Lloyd* v. *Jones*, 17 L. J. C. P. 206; *Bland* v. *Lipscomb*, 24 L. J. Q. B. 155, note.

For an instance of a claim of right to take rabbits on a common under a charter, see *Newcombe* v. *Fewins*, 41 J. P. 581.

Where the wastes of a manor have been enclosed under some enclosure Act, and parts allotted to persons as freehold, in respect of their former rights, the right of sporting on their freeholds *primâ facie* belongs to those persons: *Devonshire* v. *O'Connor*, 24 Q. B. D. 468, 473; but it frequently happens that the Enclosure Act contains words which seem to indicate that the right of shooting is reserved to the lord. The question in

each particular case depends on the terms of the Act, which will be construed most strongly against the lord, and he must show that the Act reserves to him, in express terms, or by necessary implication, the sporting rights or free-warren, which, if he possessed them before the Act, would be extinguished unless expressly reserved. For the construction of particular Acts, and the principles followed by the Court, see *Graham* v. *Ewart*, 7 H. L. C. 331; 29 L. J. Ex. 88; *Lonsdale* v. *Rigg*, 26 L. J. Ex. 196; *Leconfield* v. *Dixon*, L. R. 3 Ex. 30; 37 L. J. Ex. 33; *Hilton* v. *Bowes*, L. R. 1 Q. B. 359; 35 L. J. M. C. 137; *Robinson* v. *Wray*, L. R. 1 C. P. 490; *Musgrave* v. *Forster*, L. R. 6 Q. B. 590; 40 L. J. Q. B. 207; *Sowerby* v. *Smith*, L. R. 9 C. P. 524; 43 L. J. C. P. 290; 31 L. T. 309; *Duke of Devonshire* v. *O'Connor*, 24 Q. B. D. 468.

Free-warren.—The right of free-warren is a franchise which confers upon the grantee the exclusive right to preserve, and keep as his own qualified property the beasts and fowls of warren within certain limits, and to prevent all other persons from killing and taking them, even on lands of which those others may be freehold tenants: *Devonshire* v. *Lodge*, 7 B. & C. 36. Beasts and fowls of warren are certainly hares, rabbits, pheasants, and partridges, and, it is said, quails, rails, woodcocks, mallards, and herons are included (Co. Litt. 233 a; *Barrington's Case*, 8 Rep. 136 b, 138 b); but grouse are not fowls of warren: *Devonshire* v. *Lodge*, *supra*.

Free-warren must not be confused with a warren of hares and rabbits, which is a mere breeding ground that any person may make on his soil. No man may make a free-warren on his land or elsewhere: *Case of Monopolies*, 11 Rep. 84 b, 87 b. The right to have a

free-warren is a franchise and an incorporeal hereditament, which lies only in grant from the Crown, but may be acquired by prescription, implying such a grant: *Beauchamp* v. *Winn*, L. R. 6 H. L. 223, 238; *Pannell* v. *Mill*, 3 C. B. 625; *Morris* v. *Dimes*, 1 A. & E. 654. The right has usally been granted to the lord of a manor over the demesne lands of the manor, *i.e.*, such lands as are, or potentially may be, in the lord's own hands (*Att.-Gen.* v. *Parsons*, 2 C. & J. 279; *Pickering* v. *Noyes*, 4 B. & C. 639), though sometimes over Crown lands, when it is a warren in gross: *Morris* v. *Dimes*, *supra;* Elton's Copyholds, p. 239. Reputation is admissible evidence of a claim of free-warren over a manor: *Carnarvon* v. *Villebois*, 13 M. & W. 313. Free-warren is not parcel of the manor, and, unless the right has become appurtenant by prescription, will not pass by the conveyance of the manor with the appurtenances; but the right may be severed from the land and a free-warren may be reserved by the grantor, on the alienation of land, and held by him in gross: Elton's Copyholds, p. 239; *Bowlston* v. *Hardy*, Cro. Eliz. 547; *Morris* v. *Dimes*, *supra;* 44 & 45 Vict. c. 41, s. 6 (3). Free-warren is not forfeited by non-user: *Leicester Forest*, Cro. Jac. 155.

The owner of a free-warren and his warrener, it is said, may kill dogs, which are used to hunt the warren, whether at the time doing damage or not: *Wadhurst* v. *Damme*, Cro. Jac. 45; see *Vere* v. *Lord Cawdor*, 11 East, 568; *Protheroe* v. *Matthews*, 5 C. & P. 581. A free-warrener can bring an action for breaking and entering his warren against persons who trespass there in pursuit of beasts and fowls of warren: *Dacre* v. *Tebb*, 2 W. Bl. 1151; *Carnarvon* v. *Villebois*, 13 M. & W. 313; *per* Parke, B., *Holford* v. *Bailey*, 13 Q. B. 426, 445.

The rights of an owner of free-warren are expressly safe-guarded by the Game Act, 1831. By sect. 8, it is provided that nothing herein contained shall authorize any person seised or possessed of or holding any land, to kill or take the game, or to permit any other person to kill or take the game upon such land, where, by grant, such right has been given to any other person, or shall in anywise prejudice the rights of any owner of a warren; and (sect. 35) the trespass clauses of the Act do not extend to any person *bonâ fide* claiming or exercising any right or reputed right of free-warren, or any game-keeper lawfully appointed within the limits of any free-warren.

Owners of free-warren may prosecute tenants of lands within the limits of the free-warren, who kill beasts or fowls of warren there, or give permission to others to do so (sect. 12); but it is probably inadvisable to do so, as a claim of right is very likely to be set up, and the magistrate's jurisdiction possibly ousted (see p. 260); and consequently an action or other civil proceedings for breach of warren would be a more simple remedy. Tenants of land within the limits of a free-warren do not enjoy rights of killing the ground game under the Ground Game Act, 1880. Sect. 5 provides that nothing in that Act shall affect any special right of killing or taking ground game, to which any person, other than the landlord, lessor, or occupier shall have become entitled before the passing of the Act, by virtue of any franchise, charter, or Act of Parliament. The remedy would be an action for damages for breach of warren.

Forest.—A forest is the right of keeping, for the

purposes of venery and hunting, wild beasts of forest, *i. e.*, the stag, hind, and hare; of chase, *i. e.*, the buck, doe, and fox; and of warren, *i. e.*, hares, rabbits, pheasants, partridges, and possibly quails, rails, woodcocks, mallard, and herons, "in a territory of woody ground and fruitful pastures, set apart for the purpose, who can abide there in the safe protection of the king for his delight and pleasure": Manwood's Forest Laws, p. 143; Co. Litt. 233 a. In plain words, a forest is a royal game preserve wherein no person whatever may hunt, except by royal licence. The privilege of forest is said to have been held by grant from the Crown by a subject, but such instances have been very rare: Manwood, p. 153. And as a rule, when a forest has been granted to a subject by the Crown, it has been first disafforested, and given to such person as a chase only: *vide infra.* The peculiarity of a forest is that it has its own courts and officers, which deal with all offences respecting the deer and other beasts of forest, chase, and warren within the limits. The officers of a forest were the chief warden, verderers, and foresters, and the courts were the wardmote, who presented offenders in the same manner as a grand jury, and the swainmote, who tried them. The prisoner was held in custody by the chief warden, and if convicted by the swainmote, was sentenced by the justice in eyre, who came round the circuit. There were originally sixty-nine forests in England, and many tracts of country still preserve the name, though disafforested: for example, Sherwood, Savernake, Charnwood, Ashdown, and Epping, but only one, at the present time, at all preserves the characteristics of a forest, viz., the New Forest, which is still under the control of verderers who hold a court,

is in the hands of the Crown, and has a herd of red deer. The Forest of Dean and Windsor Forest are royal forests, but in the former the deer have ceased to exist, and in the latter they are parked. Such forestal lands as still remain in the hands of the Crown are under the control of the Commissioners of Woods and Forests (10 Geo. 4, c. 50), and they grant licences to persons to sport there. The several statutes dealing with particular royal forests are enumerated under "Crown Lands," Appendix 4, Chronological Table of Statutes. The exact extent of a forest is defined by marks and boundaries, which are matters of record: Manwood, p. 242. In the time of Henry II., Ric. I., and John, a large area of ground adjacent to the royal forests was added to them, but by perambulations granted by the Carta de Foresta in the time of Henry III. was severed again from them, and was called the *purlieu*. After the purlieu was disafforested, an owner of land within its limits, to the value of forty shillings, might hunt deer fairly with dogs and greyhounds towards the forest, but not forestall them in their return, or continue the chase into the forest: on the other hand, the king's ranger, who was apparently chief forester or keeper, had authority to enter the purlieu and drive the deer who roamed back to the forest: Manwood, p. 292. At the present day, deer are protected as much in the purlieu as in the forest: see "Deer," p. 155; Larceny Act, 1861, ss. 12 *et seq.*

The rights of the Crown and of the Commissioners of Woods and Forests are specially safeguarded by sect. 9 of the Game Act, 1831. This section provides that—

"Nothing in this Act contained shall in any way alter or affect the prerogative rights or privileges of his

Majesty, his heirs or successors, nor the powers or authorities now vested in the commissioners of his Majesty's woods, forests, and land revenues, in or relating to any of his Majesty's forests or the boundaries thereof, nor in or relating to the appointment of any stewards, gamekeepers, or other officers of any of his Majesty's forests, parks, or chases, or of any hundred, honour, manor, or lordship being part of the possessions and land revenues of the Crown, nor the rights, privileges, or immunities of any chief justice in eyre, or any warden, deputy-warden, or lieutenant of any of his Majesty's forests, or any rangers, verderers, foresters, master-keepers, under-keepers, or other officers of or in any such forests, parks, or chases, or of any person entitled to any right or privilege, under them or any of them, nor the rights or privileges of any persons holding under any grants or purchases from the Crown, nor give to any lord of any manor or manors within any forest, or the boundaries thereof, nor to any other person whatsoever, any privileges, rights, or powers, within any such forest, park or chase, or the boundaries thereof, which he did not possess, or to which he was not entitled before the passing of this Act, but that all the aforesaid prerogatives, immunities, privileges, rights, and powers, shall remain as if this Act had not been made."

Trespassers found in the forest in search or pursuit of game may be arrested by the officers of the forest in the forest in default of giving their names and addresses, or on giving false ones, or wilfully continuing, or returning after being ordered to go. (Game Act, 1831, ss. 31, 32.)

Sect. 33 provides that if any person whatever shall trespass by day in pursuit of game in any of the royal forests, parks, chases, or warrens, he is liable on conviction before two justices to a penalty not exceeding two pounds and costs: see p. 82.

And by sect. 36, game (as defined by sect. 2) found in the possession of poachers by day or night recently killed may be seized by the forest officers. On the meaning and effect of the above sections, see "Trespass in pursuit of game," p. 73; and with regard to the killing of deer in forests, see p. 156.

Chase.—A chase differs from a forest only in the fact that it has no special courts and officers. All forests are chases, and the right of chases confers on the owner the same privileges of venery and hunting as the right of forest. In fact, it would appear that, though a chase may be the property of the Crown, as a rule a chase is a Crown forest, which has been disafforested and granted to a subject (Manwood, Chap. III.), with the forest rights of venery, &c. Chase can lie only in grant from the Crown or immemorial user, and if forest lands are disafforested and sold, no right of chase naturally attaches to them without such special grant, or long user implying the same.

Rights of forest and chase are not like rights of common, which can exist only over other's lands: *Lloyd* v. *Powis*, 4 El. & Bl. 485; but they may be held over the owner's lands, and the lands of others equally: *Robinson* v. *Dhuleep Singh*, 11 C. D. 798.

Park.—A legal park is a chase enclosed with a pale in which are kept beasts of chase. It lies in grant from the Crown or immemorial user. The owner of a legal park may shoot a dog chasing game in it: *Wright* v. *Ramscot*, 1 Saund. 84, n. 3.

Decoys.—A decoy is not a franchise. Any person

may establish a decoy on his land whether his neighbour has one or not: *per* Holt, C. J., 11 East, 576. An action for damages will lie against persons who discharge guns near the decoy of another, with the express purpose of driving out the wild fowl, although they may have a right to shoot game at the place, for this is wilfully injuring a man in his trade: *Carrington* v. *Taylor*, 11 East, 573; *Keble* v. *Hickeringill*, 11 East, 574. See also *Ibbotson* v. *Peat*, 34 L. J. Ex. 118; 12 L. T. N. S. 313.

Warren of rabbits.—Any person may allow rabbits to form a warren on his ground (*Bowlston* v. *Hardy*, Cro. Eliz. 547); but he must not maintain a nuisance by importing on to his soil an unreasonable quantity of rabbits, so as to cause injury to his neighbour's crops: *Hilton* v. *Green*, 2 F. & F. 821; *Farrer* v. *Nelson*, 15 Q. B. D. 258; 54 L. J. Q. B. 385.

Rookery.—No action will lie for disturbing a rookery by firing off guns. There is no property in rooks, which are not staple articles of food, and have been declared noxious animals, and a nuisance: 24 Hen. 8, c. 10; 8 Eliz. c. 15; *Hannam* v. *Mockett*, 2 B. & C. 934.

CHAPTER III.

LANDLORD AND TENANT.

Tenants' sporting rights.—The Game Act, 1831, s. 7, provided that the tenant who occupied land under a lease or agreement for less than twenty-one years made prior to that Act, was deprived, except in certain cases, of his common law right to the game (as defined sect. 2); but this provision is obviously of very little importance now, and at the present day the common law doctrine prevails, viz., that the sporting rights on his land belong to the tenant by virtue of his property in the soil: *Moore* v. *Earl of Plymouth*, 7 Taun. 614. The tenant may also grant his sporting rights, including the sole and exclusive right to kill hares and rabbits, to third persons, despite the provisions of sect. 3 of the Ground Game Act, 1880, because the object of that Act is to protect a tenant against his landlord, and such object is not thereby defeated: see *Morgan* v. *Jackson*, (1895) 1 Q. B. 885; 64 L. J. Q. B. 462. In this case the plaintiff, a tenant, agreed in writing to let the defendant, for an annual sum, the sole right of killing all winged game, hares, and rabbits on his farm. On his suing for the price, the defendant set up illegality, on the ground that the agreement divested the plaintiff of his indefeasible right to the hares and rabbits under the Ground Game Act, 1880, s. 3, and the County

Court judge gave judgment for him, but the Divisional Court (Day and Wright, JJ.) held that sect. 3 was only directed against occupiers of land depriving themselves, in collusion with their landlord, of the right to kill ground game given by the Act, and that there was nothing to prevent a tenant from granting to a third party his rights at common law. Wright, J., however, remarked that, despite his grant, "it was doubtful whether the tenant retained a right to kill the ground game himself. I should say that probably he did." (See sect. 2.)

Restrictions.—Although the general rule that the tenant is entitled to the sporting rights on his land has not been affected by the Ground Game Act, 1880 (*Pochin* v. *Smith*, 52 J. P. 4), yet by the construction that has been put upon sects. 2 and 6 of this Act, certain restrictions have been imposed on tenants in the manner in which they may exercise their common law rights.

The Ground Game Act, sect. 6, provides as follows—

No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding two pounds.

It has been held that the words "or otherwise" include tenants who are entitled to the sporting rights

on their land at common law, and that they are, in the same manner as tenants exercising merely concurrent rights, prohibited from using spring traps except in rabbit holes: *Saunders* v. *Pitfield*, 58 L. T. 108.

Under the provisions of the same section, therefore, tenants are also forbidden, under the penalty above mentioned, to shoot rabbits or hares at night, or to employ poison to destroy them, and if they grant their sporting rights to a third party, that person would be in no better position.

A landlord's rights, however, are not restricted by the terms of the above section, as the words "or otherwise" do not include him: *Smith* v. *Hunt*, 54 L. T. 422; and he or his grantees are not subject to the above penalties for killing ground game in the above manner.

All persons are, however, forbidden to shoot game at night (Hares Act, 1848, *post*, p. 29); and "game" here means hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (Game Act, 1831, s. 2), though no penalties are imposed. All persons are also forbidden under heavy penalties to lay poison with intent to destroy or injure any of the above game (Game Act, 1831, s. 3): see *post*, p. 138.

Licences.—Neither a landlord nor tenant requires a licence to kill game when taking or killing rabbits on his own land, nor do persons who are doing so by his direction or permission. (Game Licence Act, 1860, s. 5 (2).) Where the sporting rights are reserved to the landlord, cp. Ground Game Act, 1880, s. 4. Neither the owner, nor persons in actual occupation (whether by tenancy or permission), of inclosed land require a game licence to kill hares on such land (provided they

are, of course, entitled to do so) by virtue of the Hares Act, 1848, nor does the person duly appointed under such Act to do so for them. This Act provides as follows:—

That from and after the passing of this Act it shall be lawful for any person, being in the actual occupation of any inclosed lands, or for any owner thereof who has the right of killing game thereon, by himself or by any person directed or authorized by him in writing, according to the form in the schedule to this Act annexed, or to the like effect, so to do, to take, kill, or destroy any hare then being in or upon any such inclosed lands, without the payment of any such duties of assessed taxes as aforesaid, and without the obtaining of an annual game certificate.

2. Provided always, and be it enacted, that no owner or occupier of land as aforesaid shall be authorized to grant or continue, under the provisions of this Act, authority to more than one person, at one and the same time, to kill hares upon his land within any one parish; and that he shall deliver the said authority, or a copy thereof, or cause the same to be delivered, to the clerk of the magistrates acting for the petty sessions division within which the said lands are situate, who shall forthwith register the same, and the date of such registration, in a book to be kept by him for such purpose, which book shall be at all reasonable times open to the inspection of the clerk of the commissioners acting in the execution of the Acts for assessed taxes or of any of the collectors of assessed taxes within such district; and the said authority, so soon as it shall have been registered as aforesaid, shall be held good until after the first day of February in the year following that within which the same is granted, unless the same be previously revoked, and notice of such revocation be given to the clerk of the magistrates as aforesaid; and the said registered authority, or the unrevoked register thereof, shall be good and sufficient evidence of the right of the person to whom authority is given by the same to kill

hares upon the lands mentioned within the same without having obtained an annual game certificate.

3. And be it enacted, that no person so directed or authorized to kill any hare as aforesaid shall, unless otherwise chargeable, be liable to any duties of assessed taxes as gamekeeper.

4. And be it enacted, that from and after the passing of this Act it shall be lawful for any person to pursue and kill or to join in the pursuit and killing of any hare by coursing with greyhounds, or by hunting with beagles or other hounds, without having obtained an annual game certificate.

These exemptions are repeated in Game Licence Act, 1860, s. 5 (3).

5. Provided also, and be it enacted, that nothing herein contained shall extend or be taken or construed to extend to the making it lawful for any person, with intent to destroy or injure any hares or other game, to put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway, or for any person to use any fire-arms or gun of any description, by night, for the purpose of killing any game or hares.

As to laying poison to kill game, see Game Act, 1831, s. 3 (p. 138).

The provision against shooting game at night is new and curious, and game would only mean those animals defined as such by Game Act, 1831, s. 2. No penalty is imposed for the wrongful act, and the only effect of making it unlawful is to render persons liable for the consequences, if any injury occurred. As to shooting ground game at night, under the Ground Game Act, see sect. 6 of that Act (p. 49).

6. Provided also, and be it enacted, that where any tenant of any land for life or lives, years, or otherwise,

now is or hereafter shall be bound by any agreement not to take, kill, or destroy any game upon any lands included in such agreement, then and in all such cases nothing herein contained shall extend or be taken or construed to extend to authorize or empower such tenant to take, kill, or destroy any hare upon any such lands so included in such agreement, or to authorize any other person to kill or destroy any hare upon any such lands.

7. And be it enacted, that in the interpretation of this Act the singular number shall extend to several persons and things as well as to one person or thing; and any word importing the plural number shall apply to one person or thing as well as to several persons or things; and every word importing the masculine gender only shall extend to a female as well as a male; and that the word "agreement" shall include any covenant, proviso, promise, undertaking, condition, or reservation; and that the word "parish" shall include any hamlet, township, tithing, or extra-parochial place; and for the purposes of this Act the word "night" shall be considered and is hereby declared to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

SCHEDULE.

I, A. B., authorize C. D. to kill hares on [my lands, *or*, the lands occupied by me, *as the case may be*] within the of [*here insert the name of the parish or other place, as the case may be*]. Dated this day of .

Witness, . A. B.

Neither owners nor occupiers of land require a game licence to kill deer upon such land. (Game Licence Act, 1860, s. 5.) See "Deer," p. 155.

Saving of rights of free-warren, forest, &c.—Landlord and tenant alike hold their land subject to the right of free-warren, forest, chase, &c., that third parties may be

entitled to upon it. Thus the Game Act, 1831, s. 8 (last paragraph), provides—

That nothing in this Act contained . . . shall in any manner prejudice the rights of any lord or owner of any forest, chase, or warren, or of any lord of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, or of any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty.

As to free-warren, forest, chase, &c., see pp. 17, 19, 23; and as to reputed manor, see p. 145.

Sect. 9 provides as follows:—

That nothing in this Act contained shall in any way alter or affect the prerogative, rights, or privileges of his Majesty, his heirs or successors, nor the powers or authorities now vested in the Commissioners of his Majesty's Woods, Forests, and Land Revenues, in or relating to any of his Majesty's forests or the boundaries thereof, nor in or relating to the appointment of any stewards, gamekeepers, or other officers of any of his Majesty's forests, parks, or chases, or of any hundred, honor, manor, or lordship, being part of the possessions and land revenues of the Crown, nor the rights, privileges, or immunities of any chief justice in eyre, or any warden, deputy warden, or lieutenant of any of his Majesty's forests, or any rangers, verderers, foresters, master-keepers, under-keepers, or other officers of or in any such forests, parks, or chases, or of any person entitled to any right or privilege under them or any of them, nor the rights or privileges of any persons holding under any grants or purchases from the Crown, nor give to any lord of any manor or manors within any forest or the boundaries thereof, nor to any other person whatsoever, any privileges, rights, or powers within any such forest, park, or chase, or the boundaries thereof, which he did not possess or to which he was not entitled before the passing of this Act, but that all the aforesaid

prerogatives, immunities, privileges, rights, and powers shall remain as if this Act had not been made.

Sect. 10 provides as follows:—

That nothing herein contained shall be deemed to give to any owner of cattlegates or rights of common upon or over any wastes or commons any interest or privilege which such owner was not possessed of before the passing of this Act, nor to authorize such owner of cattlegates or rights of common to pursue or kill the game found on such wastes or commons; and that nothing herein contained shall defeat or diminish the rights or privileges which any lord of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty, may, before the passing of this Act, have exercised in or over such wastes or commons; and that the lord or steward of the Crown of every manor, lordship, or royalty, or reputed manor, lordship, or royalty, shall have the right to pursue and kill the game upon the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty, and to authorize any other person or persons who shall have obtained an annual game certificate to enter upon such wastes or commons for the purpose of pursuing and killing the game thereon.

As to rights of sporting on the wastes of the manor, see p. 15. Owners of rights of common or cattlegates are not tenants of the common: *Lonsdale* v. *Rigg*, 26 L. J. Ex. 196; 1 H. & N. 923; *Greathead* v. *Morley*, 3 M. & G. 139; nor are they occupiers under the Ground Game Act, 1880: see sect. 1 (2).

Reservation of sporting rights.—It has long been usual in agricultural leases to reserve the sporting rights to the lessor, and the Game Act, 1831, s. 8, has expressly protected such reservations.

This section provides as follows :—

That nothing in this Act contained shall authorize any person seised or possessed of or holding any land to kill or take the game, or to permit any other person to kill or take the game upon such land, in any case where, by any deed, grant, lease, or any written or parole demise or contract, a right of entry upon such land for the purpose of killing or taking the game hath been or hereafter shall be reserved or retained by or given or allowed to any grantor, lessor, landlord, or other person whatsoever ; nor shall anything in this Act contained defeat or diminish any reservation, exception, covenant, or agreement already contained in any private Act of Parliament, deed, or other writing relating to the game upon any land, nor in any manner prejudice the rights of any lord or owner of any forest, chase, or warren, or of any lord of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, or of any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty.

As is pointed out elsewhere (see p. 58), the right of sporting on other's lands is a *profit à prendre*, and lies only in grant under seal: *Bird* v. *Higginson*, 2 A. & E. 696 ; *Brigstock* v. *Raynor*, 39 J. P. 453; and the effect of a reservation of such rights by the lessor is that of a re-grant by the tenant of them to him: *Wickham* v. *Hawker*, 7 M. & W. 63 ; *Houston* v. *Sligo*, 55 L. T. 614 ; but, although *primâ facie* this re-grant should be made by deed, yet in a parol demise a landlord who has verbally reserved the game has sufficient authority to give leave to persons to sport on the land, so as to prevent them from being trespassers under Game Act, 1831, s. 30 : *Jones* v. *Williams*, 46 L. J. M. C. 270 ; 36 L. T. 559 ; *Liversedge* v. *Whiteoak*, 57 J. P. 692.

A proper reservation of the right of killing and

taking game should contain a right of entry for the purpose of doing so; it is not sufficient that the tenant merely agrees to preserve the game, for *non constat* that he is to do so for the landlord: *Coleman* v. *Bathurst*, L. R. 6 Q. B. 366. A covenant re-granting the sporting rights runs with the land, and may be sued upon by an assignee of the reversion: *Hooper* v. *Clark*, L. R. 2 Q. B. 200; 36 L. J. Q. B. 79.

A condition of re-entry in case the tenant or his assigns shall be convicted of any offence against the game laws will not run with the reversion, as it is not a condition touching the land demised: *Stevens* v. *Copp*, L. R. 4 Ex. 20; 38 L. J. Ex. 31; and, *per* Kelly, C. B., shooting game without a licence is not an offence against the game laws.

Tenant killing game, &c. when reserved.—The Game Act, 1831, s. 12, provides as follows—

And be it enacted, that where the right of killing the game upon any land is by this Act given to any lessor or landlord, in exclusion of the right of the occupier of such land, or where such exclusive right hath been or shall be specially reserved by or granted to, or doth or shall belong to, the lessor, landlord, or any person whatsoever other than the occupier of such land, then and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord, or other person having the right of killing the game upon such land, such occupier shall, on conviction thereof before two justices of the peace, forfeit and pay for such pursuit such sum of money not exceeding two pounds, and for every head of game so killed or taken such sum of money not exceeding one pound, as to the

convicting justices shall seem meet, together with the costs of the conviction.

Imprisonment in default may be imposed for a term not exceeding two months with hard labour (sect. 38), where the fine exclusive of costs does not amount to five pounds; where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5 (sect. 38, repealed in part by Summary Jurisdiction Act, 1884). The effect of this section is that where the terms of the lease or agreement only reserve the "game" to the landlord or lessor, rabbits are not included, because game is strictly defined for the purposes of this Act (sect. 2) as including only hares, pheasants, partridges, grouse, heath or moor game, blackgame, and bustards, and consequently, the tenant may in such cases kill the rabbits, and also woodcocks, snipes, quails, landrails, and other birds the usual object of sport, for his own use, and may authorize a servant to do so for him: *Spicer* v. *Barnard*, 28 L. J. M. C. 176; 33 L. T. 121; *Padwick* v. *King*, 29 L. J. M. C. 42; 1 L. T. N. S. 98.

Where the "game" is reserved to the landlord, the tenant may also kill the hares concurrently with him subject to the provisions of the Ground Game Act, 1880 (*infra*); but, save and except as provided by that Act, the tenant cannot authorize any stranger to kill for his own use or for the stranger's use the rabbits, woodcocks, snipes, quails, or landrails, for, by the Game Act, 1831, s. 30 (see p. 75), where the right to kill the game is vested in the landlord or some other person, the licence of the tenant is no defence to a prosecution by the landlord, or such other person, against a stranger for trespassing in pursuit of game, or woodcocks, snipes,

quails, landrails, or rabbits: *Pryce* v. *Davies*, 35 J. P. 374; *Morden* v. *Porter*, 7 C. B. N. S. 641; 29 L. J. M. C. 213.

Where, however, the lease or agreement contains a reservation of the right of shooting and sporting over the tenant's land, the landlord and his grantees have, subject to the provisions of the Ground Game Act as to hares and rabbits, the exclusive right to kill everything understood in common parlance to be the object of sport, because the word "game" is not mentioned, and so the distinctions drawn in the Game Act, 1831, between game, as there defined, and such other objects of sport, do not arise: *Jeffryes* v. *Evans*, 34 L. J. C. P. 261. A reservation of hunting merely will not extend to killing feathered game: *Moore* v. *Earl of Plymouth*, 7 Taunt. 614.

Prosecution for killing game, &c. where reserved.—Tenants who kill game upon their land, where it is reserved to the landlord or belongs to some other person, cannot be convicted of trespass, for no tenant can be a trespasser on his own land (*Spicer* v. *Barnard*, 28 L. J. M. C. 176), but must be proceeded against under sect. 12, *supra*.

If the tenant kill game as defined in sect. 2 (except hares under the provision of the Ground Game Act, 1880), he is liable to the penalty under sect. 12 on the suit of either the landlord, to whom the sporting rights are reserved, or the grantee of the landlord's rights, or of the owners of a franchise upon such lands. If, however, he kill snipes, woodcocks, quails, and landrails, neither the landlord, nor any other person can prosecute him under sect. 12, and the only remedy under such circumstances is a breach of his covenant to re-grant all

the sporting rights. The same remarks apply if he kill other objects of sport not game. With regard to rabbits, the Ground Game Act gives the tenant a concurrent right to them, and, therefore, in no case can they be reserved to the landlord. Where the person, having the sporting rights on any land, prosecutes the tenant for taking game on such land, he must prove his rights strictly by producing the grant, charter, or statute showing his title to the sporting rights: *Barker* v. *Davis*, 34 L. J. M. C. 140.

The owner of a franchise of free-warren is very ill-advised if he prosecute any tenant for killing game upon the warren; he should sue the offender for breaking and entering his free-warren, because it is almost certain that a claim of right (see p. 260) would be successfully set up: *Carnarvon* v. *Villebois*, 13 M. & W. 313.

A tenant can prosecute his landlord for trespass in pursuit of game on his farm where the game belongs to the tenant, except where the tenant's lands form part of a manor of which the landlord is lord; he can then only bring an action for trespass. (Game Act, ss. 30, 35.)

For the recovery of penalties under sect. 12, see p. 255.

The right of action which a sporting tenant has against a tenant are discussed under the head of "Sporting Tenants," p. 63.

Landlords may authorize persons to kill reserved game.—The Game Act, 1831, s. 11, provides that where the lessor or landlord have reserved to himself the right of killing the game upon any land, it shall be lawful for him to authorize any other person or persons who shall

have obtained an annual (game certificate, now) licence to kill game (Game Licence Act, 1860, s. 1), to enter upon such land for the purpose of pursuing and killing game thereon.

This section speaks for itself; if the landlord were not permitted to ask friends or grant rights of entry upon his tenants' lands for the purpose of killing the game reserved to him, the tenant could sue such persons for trespass.

Ground Game Act, effect on reservations.—Since the Ground Game Act, 1880, became law (7th September, 1880), a reservation in leases of land by a landlord of the right of sporting on the land can no longer include the exclusive right to kill hares and rabbits. The Act will be found entire at the end of this volume, but the sections will be dealt with hereafter in a more convenient sequence. The first clause of sect. 1 of the Act provides—

Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land.

And sect. 8 provides that for the purposes of this Act the words "ground game" mean hares and rabbits.

Occupier.—The word "occupier" is not defined by the Act, but means, generally, the person for the time being lawfully entitled to and exercising the exclusive possession of land. Certain persons are, however, declared in clear terms not to be occupiers.

Thus, by sect. 1, sub-s. 2, it is provided as follows:—

A person shall not be deemed to be an occupier of land for the purposes of this Act by reason of his having a right of common over such lands; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months.

Cp. Game Act, 1831, s. 10: see p. 32.

Landlords in occupation of their own land are not occupiers: *Smith* v. *Hunt*, 54 L. T. 422. "I think it is clear," said Mathew, J., in this case, "from the wording of the Act alone, that the legislature had no intention of restricting the undoubted right which landlords possess to deal with their land and kill the ground game in any way they pleased"; and the Court held that the restrictions imposed on occupiers under sect. 6, of setting spring traps above ground, did not apply to owners in occupation of their own land. The following cases are useful for comparison as showing what persons have been under various conditions held to be occupiers. Thus, an outgoing tenant who holds over lands for the purpose of getting in his crops was held an occupier of such lands, so as to maintain or resist an action for trespass: *Boraston* v. *Green*, 16 East, 71; *Griffiths* v. *Puleston*, 13 M. & W. 358; cp. under the Agricultural Holdings Act, 1883, *In re Paul*, 24 Q. B. D. 247; 59 L. J. Q. B. 30. Persons permitted by the tenant to use small pieces of land, for the purpose of growing potatoes, have been held to be occupiers: *Greenslade* v. *Tapscott*, 3 L. J. Ex. 328. Immediately a tenant sub-lets his land, he is no longer occupier for the purposes of the Ground Game Act, but lessor.

The tenant, though living himself on another farm, may be occupier of premises: see *R.* v. *Poynder*, 1 B.

& C. 178. The word "occupier" will include joint tenants; their powers of appointment of persons to kill the ground game could only be jointly exercised; but whether they could each of them exercise the rights of an occupier in killing the ground game by himself, is a matter admitting of argument. In all probability each could do so: cp. *Tax Case*, 1473, where a member of a corporation which owned a common was proceeded against for killing rabbits on the common without a game certificate, but the judges held that he was justified in doing so, as being the proprietor of inclosed ground.

Leases and contracts prior to the Act.—The Act passed on September 7, 1880, and sect. 5 provides as follows:—

Where at the date of the passing of this Act the right to kill and take ground game on any land is vested by lease, contract of tenancy, or other contract *bonâ fide* made for valuable consideration in some person other than the occupier, the occupier shall not be entitled under this Act, until the determination of that contract, to kill and take ground game on such land.

There have been one or two decisions on the meaning of the word "vested." Thus, where at the passing of the Act lands were in the occupation of a person with a legal interest as tenant from year to year, expiring after September 7, 1880, but also with an equitable interest, under an agreement prior to the Act, for a lease for fourteen years to commence after the legal interest, and reserving the right to the ground game to the landlord, it was held that this right was preserved to the landlord, and was vested in him equitably: *Allhusen* v.

Brooking, 26 C. D. 559; 53 L. J. Ch. 520; 51 L. T. 57. And where, by lease dated September 4, 1865, H. demised to L. shooting over land for twenty years from November 1, 1863; in 1874 L. assigned it to B. and W., who after the expiration of the lease continued to shoot as tenants from year to year, and by lease of June 28, 1869, H. demised to C. these lands for sixty years, reserving the game, it was held that the right to kill ground game was vested in some other person than the occupier (viz., the landlord) on the expiration of the lease of 1865, and that C. was not entitled to kill the ground game: *Hassard* v. *Clark*, 13 L. R. Ir. 391.

The next clause of sect. 5 provides as follows:—

For the purposes of this Act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the time when such tenancy would by law become determinable if notice or warning to determine the same were given at the date of the passing of this Act.

This, it is clear, is now of little importance.

Concurrent rights subject to franchises, &c.—Although the tenant is expressed in sect. 1 to be entitled concurrently with any other person, the last clause of sect. 5 provides that—

Nothing in this Act shall affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this Act by virtue of any franchise, charter, or Act of Parliament.

The effect of this proviso is to save, to third parties only, franchises of free-warren and free-chase, and such special rights as have been granted by Act of Parlia-

ment to lords of manors on the inclosure of commons: see pp. 16, 17, 23.

Persons entitled to such franchises before the passing of the Act will include the successors of such persons to those rights. This question arose in a case not carried into Court, but pending between the Earl of Carnarvon and one Clarkson ("Field," May 18, 1895).

Indefeasibility of concurrent rights.—Sects. 2 and 3 of the Act deal with this matter, and it is convenient to consider them together. They provide as follows:—

2. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by section one of this Act. Save as aforesaid, but subject as in section six hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this Act had not passed.

3. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, or which gives to such occupier any advantage in consideration of his forbearing to exercise such right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void.

The effect of these sections seems to be that a tenant, whether entitled to the game on his land at common law, or whether holding his land subject to a reservation of the game to the landlord, cannot by any possible means divest himself of the concurrent right to kill the

ground game on his land. If he be entitled to the game on his land (p. 25), there is nothing to prevent him from granting his sporting rights to a third party, including the right to kill ground game, because the object of the Act is to protect a tenant against his landlord; and the right of a tenant at common law is not affected by the Act: *Pochin* v. *Smith*, 52 J. P. 4; and the sporting lessee could not refuse to pay the price agreed upon, or set up that the contract was illegal: *Morgan* v. *Jackson*, (1895) 1 Q. B. 885; 64 L. J. Q. B. 462: see p. 25; but despite his grant he could probably kill the ground game on his land, and could not be sued upon his agreement by the sporting lessees; for by no agreement can he divest himself of the right: *Ibid.;* and sect. 2. The tenant, however, whether he be an occupier with a right to the game at common law, or to the ground game merely concurrently with the landlord, is in every case subject to penalties for setting traps, except in rabbit holes, and the other offences mentioned in sect. 6 (*infra*, p. 49).

A landlord, however, who occupies his own land, and has the sporting rights upon it, may grant them, including the right to hares and rabbits, to a sporting lessee, and would be liable to an action for breach of covenant if he shot them: for he is not an occupier for any purpose under the Ground Game Act, and would have no concurrent rights with his grantees: *Smith* v. *Hunt*, 54 L. T. 422; nor is he liable to penalties for doing the acts mentioned in sect. 6 (*Ibid.*).

If, however, the game upon the occupier's land is reserved to the landlord, every agreement, condition, or arrangement, which attempts to divest the occupier of the concurrent right to the ground game is void. Where

an agreement contains a clause to this effect, the section does not make the whole agreement void, but only such clause: *Beardmore* v. *Meakin*, L. J. Notes of Cases, 1885, p. 8. A landlord might presumably come to an arrangement with the occupier as to the method in which the right was to be exercised, *e.g.*, who should be the person appointed for reward.

Method of exercise of concurrent right.—Sect. 1 provides that the right conferred on the occupier shall be subject to the following limitations:—

The occupier shall kill and take ground game only by himself or by persons duly authorized by him in writing:

(a) The occupier himself and one other person authorized in writing by such occupier shall be the only persons entitled under this Act to kill ground game with firearms;

(b) No person shall be authorized by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game;

(c) Every person so authorized by the occupier, on demand by any person having a concurrent right to take and kill the ground game on the land or any person authorized by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorized, and in default he shall not be deemed to be an authorized person.

The effect of this section, stated generally, is that the tenant and one other person of those mentioned in sub-s. (b) can shoot the ground game on the tenant's

land, except at night (sect. 6, *infra*), and the tenant, and all or any of such persons, may kill the ground game by any other lawful method, but no person can assist the tenant to shoot or take, or shoot or take for the tenant, unless he have a written authority from the tenant to do so, and unless he produce it on demand by an authorized person.

Resident on the land.—Whether the person appointed is a member of the occupier's household resident on the land is a matter of fact for the justices to determine. "Reside" has been held to mean "eat, drink, and sleep": *R.* v. *North Curry*, 4 B. & C. 959; cp. the Bankruptcy Act, 1883, s. 95. A person merely spending the day would not be held a resident, but presumably a guest for a night or two might be. The Court of Justiciary in Scotland, it is said, held that a person *bonâ fide* invited to stay a week was a member of the household resident on the land: *Stuart* v. *Murray*, "Field," 22nd November, 1894.

In his ordinary service.—Another question of fact. It could hardly be said that labourers temporarily hired for turnip-hoeing or harvesting would come within the category.

Employed for reward.—The obvious intention of the legislature in inserting these words is to enable an occupier to employ a professional rabbit-catcher. The reward presumably might be the ground game killed, or any other consideration, but the person must be employed, and to ask a friend to shoot for the day, even if he received a present of game, could not be said

to be employing him. There is no reason why the landlord's gamekeeper should not be employed.

Authority.—The authority should specify the time of its continuance, contain the name of the holder, and presumably ought to be signed by the occupier. If the land is held by joint occupiers, each ought to sign, and if the person is the one holder of an authority to use firearms, this fact should be stated. It is a question for the justices to determine if the authority extends to the day on which the production of it is demanded.

Restrictions in the case of moorlands, &c.—Sect. 1, sub-s. 3, provides—

In the case of moorlands and uninclosed lands (not being arable lands), the occupier and the persons authorized by him shall exercise the rights conferred by this section only from the eleventh day of December in one year until the thirty-first day of March in the next year, both inclusive; but this provision shall not apply to detached portions of moorlands or uninclosed lands adjoining arable lands, where such detached portions of moorlands or uninclosed lands are less than twenty-five acres in extent.

Saving close times and unlawful methods.—Sect. 10 provides that "nothing in this Act shall authorize the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any Act of Parliament in force at the time of the passing of this Act."

Rabbits may be killed all the year round. Hares may not be killed on Sunday or Christmas Day, nor may any dog, gun, net, or engine be used to take them on that day. (Game Act, 1831, ss. 2, 3.) As

to allowing a trap to remain set over Saturday night, see *Allen* v. *Thompson*, L. R. 5 Q. B. 336; 39 L. J. M. C. 102. No person can lay poison to kill hares (Game Act, 1831, ss. 2, 3); and see the Poisoned Grain Prohibition Act (26 & 27 Vict. c. 113), p. 139.

Unauthorized persons killing, &c.—Sect. 9 provides that "a person acting in accordance with this Act shall not thereby be subject to any proceedings or penalties in pursuance of any law or statute."

If, however, a person professing to have an authority from the tenant is found killing ground game on the tenant's land, but fails to produce his authority to a person authorized to demand it, or is a second holder of an authority to use firearms, or fails to show that he is one of the persons entitled to an authority from the tenant, or is acting under an authority which does not extend to the day on which it is demanded, he is a trespasser in pursuit of game. (Game Act, 1831, s. 30; see p. 81.) And this section provides that the leave and licence of the occupier shall be no defence to a prosecution for trespass in pursuit of game under that section, where the landlord, lessor, or another person has the right of killing game upon such land by virtue of any reservation or otherwise, and such landlord, lessor, or other person shall, for the purpose of such prosecution, be deemed to be the legal occupier of such land whenever the occupier thereof shall have given such leave and licence. For the recovery of penalties, see p. 255.

The tenant is also liable to prosecution under the Game Act, s. 12 (*vide supra*, p. 34), for permitting persons wanting a valid authority to kill the ground game

upon his land at the suit of the landlord, to whom the game is reserved, or any other person entitled to the game to the exclusion of the tenant. As it could not be said that any person, since the Ground Game Act gave the tenant a concurrent right to the hares, is an exclusive owner of game (as defined by sect. 2 of the Game Act, 1831), the Ground Game Act, s. 7, provides—

Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this Act conferred on the occupier as incident to and inseparable from his occupation), such person shall, for the purpose of any Act authorizing the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner, without prejudice nevertheless to the right of the occupier conferred by this Act.

If a tenant, or any other person professing to be authorized to kill ground game, kill or take hares on Sunday or Christmas Day, they are liable to a penalty under the Game Act, 1831, s. 3 (p. 230).

Exemption from game licence.—Sect. 4 provides as follows:—

The occupier and the persons duly authorized by him as aforesaid shall not be required to obtain a licence to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the persons authorized by him, as if he had a licence to kill game: Provided that nothing in this Act contained shall exempt any person from the provisions of the Gun Licence Act, 1870.

As regards rabbits, this section does not alter the law, as a tenant might before the Act kill rabbits on his land, or authorize any other person to do so without a game licence. (Game Licence Act, 1860, s. 5 (2).) As regards hares, if the tenant had not parted with his common law rights to the game, he could kill hares on his land without the necessity of taking out a game licence, or he could appoint one other person to do so for him with the same advantage. (Hares Act, 1848, ss. 1, 2, see p. 28.) As to gun licences, see p. 182.

No person, as a rule, can sell game without a game licence, and game includes hares (Game Act, 1831, ss. 25, 2), but not rabbits.

The tenant cannot sell hares to any person but a licensed dealer in game (*ibid.*), and he cannot sell them at all during the months of March, April, May, June, or July. (Hares Preservation Act, 1892, p. 215.)

Prohibited methods of killing ground game.—Sect. 6 of the Ground Game Act provides as follows:—

No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding two pounds.

The words "or otherwise" include tenants with the common law right to the game on their lands, but not landlords in occupation (see p. 27): *Saunders* v. *Pitfield*, 58 L. T. 108; *Smith* v. *Hunt*, 54 L. T. 422. The

prohibition against killing rabbits with firearms at night is new. The Hares Act, 1848, s. 5, forbade the killing of game (as defined, Game Act, 1831, s. 2), including hares at night, but imposed no penalty. (See p. 29.)

Spring traps must be set within the rabbit hole, that is to say, not merely in the scrape, but that part of the burrow covered by the roof, according to a Scotch decision: *Brown* v. *Thomson*, 9 Rettie's Court of Session Cases, 1183. The onus will lie on the defendant of showing that his trap was in a rabbit hole.

The prohibition against killing rabbits by poison is new, though see the Poisoned Grain, Seed and Meal Prohibition Act (26 & 27 Vict. c. 113), p. 139. The Game Act, 1831, s. 3, imposes a heavy penalty on any person who lays poison on any ground where game, including hares, usually resort, or on any highway, with intent to kill them (p. 138), and such provisions are saved by sect. 10 of the Ground Game Act.

For the recovery of the above penalty under sect. 6, see p. 56. Any person may lay an information for the offences mentioned in that section: cp. *Smith* v. *Hunt*, 54 L. T. 422.

General powers of a tenant with regard to trespassers.—A tenant may, like any one else, lay an information against any person he sees offending against the Game Act, 1831, anywhere: *Morden* v. *Porter*, 29 L. J. M. C. 213; 1 L. T. N. S. 403; *Middleton* v. *Gale*, 8 A. & E. 155. (See p. 255.)

He may also, whether he has the right to the game or not, require persons poaching by day upon his land to quit the same, and demand their names and addresses, and if they refuse to give their names and addresses, or

give false names and addresses, or wilfully continue, &c., can arrest them within the provisions of the Game Act, 1831, s. 31. (See p. 84). He may also take game (*Ibid.*, s. 2) from poachers, which he sees in their possession recently killed (s. 36): p. 89. He may also arrest night poachers on his land and pursue them beyond it (Night Poaching Act, 1829, s. 2, p. 100). He may also demand the production of game licences by any persons he sees doing any act upon his land for which a game licence is required (Game Licence Act, 1860, s. 10). He may not prosecute under this section as only an excise officer can do so, but can proceed under the Game Act, 1831, s. 23, if that applies.

Damage by harriers or foxhounds.—The tenant has no summary remedy for trespass against persons who are hunting or coursing with hounds over his lands in fresh pursuit of a hare or fox already started upon other lands (Game Act, 1831, s. 35), but he may maintain an action of trespass against such persons: *Deane* v. *Clayton*, 7 Taunt. 489. And with regard to hunting generally, there is absolutely no justification for members of a hunt in pursuit of a fox or hare to come upon the lands of persons whose consent has not been expressly or tacitly given: *Paul* v. *Summerhayes*, 4 Q. B. D. 9; 48 L. J. M. C. 33; 39 L. T. 574. One member of a hunt is not, however, liable in an action of trespass for damage caused to the tenant by horses of other members of the hunt: *Paget* v. *Birkbeck*, 3 F. & F. 683; and see the cases cited in the note. But "a master of a pack of hounds, who sends out the hounds, and his servants with them, and invites gentlemen to hunt with them, although he does not go on the lands of others

himself, but those gentlemen do, is answerable for the trespass they may commit, unless he distinctly desires them not to go on those lands, and if he does not desire them he is liable in law for the damage they do": *per* Lord Tenterden, *Baker* v. *Berkeley*, 3 C. & P. 32.

Overstocking the land with game.—The landlord, if he have reserved the sporting rights on letting his land to a tenant, is not entitled to bring on the tenant's farm, without the tenant's leave, more game than can be reasonably and properly kept on it, or cause the game upon it to increase to an unreasonable extent, nor can he in the same way overstock a wood reserved to himself adjoining the tenant's land, so that the game enters and destroys the tenant's crops, and a tenant can sue the landlord, or his shooting tenants, or persons who rent shooting from the tenant himself, and can sue and be sued by neighbours for damage caused to the crops if any of such persons cause a nuisance by collecting either on the tenant's land, or, if a neighbour in neighbouring land, such an unreasonable quantity of game: *Farrer* v. *Nelson*, 15 Q. B. D. 258; 54 L. J. Q. B. 385; 52 L. T. 766. In this case plaintiff was tenant of a farm (exclusive of coppices) on S. manor, the shooting being reserved to the landlord, and the landlord let the shooting over the whole manor to the defendants. The defendants, who had bred 1,500 pheasants on another part of the manor, in August brought 450 into a coppice (part of the manor) adjoining plaintiff's fields, and the birds destroyed his crops. On an action for damages the defendants were compelled to compensate the plaintiff for the damage the pheasants had caused.

The judgment of Pollock, B., in which Day, J., con-

curred, runs as follows:—"I will deal first with the question whether an action can be brought by a neighbour against any person who collects animals upon his land so as to injure the crops of his neighbour, and I should say that beyond doubt such an action would lie, and that the rule upon which it would be founded would not be so much negligence as *utere tuo ut alienum non lædas*. I agree that this does not solve the question before us. It is not merely the case of a man collecting noxious animals upon his land so as to injure his neighbour, but the case of a man entitled to keep game upon the land, and the tenant complaining of injury to his crops from the game being unduly multiplied. As I understand the law, each person is entitled to bring on his land any quantity of game which can reasonably and properly be kept there, *so that nothing extraordinary and non-natural is done*. The case of *Birkbeck* v. *Paget*, which was cited by counsel for the defendants to show that there is a difference between introducing fresh game on the farm, and shifting game from one part of the land to another, is at any rate an authority that the lessee is not warranted in introducing into the land game not bred in the ordinary way. So here, as long as the lessee of the right of shooting was exercising the ordinary rights which the landlord, who had reserved the right, might have exercised, he was acting within his rights; but the moment he brings on game to an unreasonable amount, or causes it to increase to an unreasonable extent, he is doing that which is unlawful, and an action may be maintained by his neighbour for the damage which he has sustained."

No action would lie against a landlord or neighbour

for game breeding in the course of nature upon their lands which consumes the tenant's crops, for this would not be maintaining a nuisance: 3 Bac. Abr. 326; *Bowlston's Case*, 5 Rep. 212. And it appears, as above cited, to be lawful to shift game bred naturally upon one part of the tenant's land to another part: *Birkbeck* v. *Paget*, 31 B. 403. To use one's land as a rabbit-warren is also lawful: *Bowlston* v. *Hardy*, Cro. Eliz. 547; but no landlord or shooting tenant can procure an excessive number of rabbits elsewhere, and turn them out on a tenant's land without being liable to pay for the damage they do, unless they have previously obtained the tenant's consent: *Hilton* v. *Green*, 2 F. & F. 821.

A tenant has in his own hands a remedy against excessive hares and rabbits by virtue of the Ground Game Act, 1880, which gives him a right to kill them, and if he fears on entering a farm that the head of game which is reserved to the landlord is likely to be large, whether bred naturally on lands in his occupation or in the adjoining coverts, his proper course is to decline to sign the lease, unless it be kept down to a certain quantity. A verbal agreement of this nature collateral to a lease, which, though silent on the point, has been executed on the faith of it, will support an action for damages caused by game kept beyond the stipulated quantity: *Morgan* v. *Griffith*, L. R. 6 Ex. 70; 40 L. J. Ex. 46; 23 L. T. 783; *Erskine* v. *Adeane*, L. R. 8 Ch. 756; 42 L. J. Ch. 849; 29 L. T. 234. As to the effect of a demise of part of an estate with liberty to shoot over the whole, and a general covenant against the increase of game: see *Cornewall* v. *Dawson*, 24 L. T. 664. A reference to arbitration is a condition prece-

dent to an action upon an agreement to pay compensation for damage done by game to an amount to be determined by arbitration: *Dawson* v. *Fitzgerald*, L. R. 9 Ex. 7; 43 L. J. Ex. 19; see also now 52 & 53 Vict. c. 49, s. 4.

Enticing and frightening away game.—No person is justified in using means to drive away game from his land for the express purpose of injuring the right of shooting upon it: see *per* Mellish, J., *Gearns* v. *Baker*, L. R. 10 Ch. 355. A person who uses a highway not for the purpose of passing and repassing, but to spoil the sport of the owner of the highway is a trespasser: *Harrison* v. *Duke of Rutland*, (1893) 1 Q. B. 142. No person may use means such as exploding rockets or guns for the purpose of preventing a neighbour from enjoying his right of shooting; to do so is to injure a man in his trade: *Ibbotson* v. *Peat*, 34 L. J. Ex. 118; *Carrington* v. *Taylor*, 11 East, 571; but there is nothing to prevent a person from trying to entice game over his neighbour's boundary by laying food for it. Where a person knows that game is attracted away from his land his remedy is to offer them stronger inducements to remain: *per* Bramwell, B., *Ibbotson* v. *Peat*, *supra*, p. 121.

Offences of occupiers and recovery of penalties.—1. Under the Game Act, 1831, s. 12 (*supra*, p. 34), occupiers pursuing, killing, or taking game (as defined, *ibid.*, s. 2) upon their land, where the landlord or any other person than the occupier is entitled to the exclusion of the occupier (except now as provided with regard to hares by the Ground Game Act, 1880), or giving

permission to others to pursue, kill, or take game (s. 2) (which includes imperfectly authorizing persons to kill hares under the Ground Game Act), where persons other than the occupier are entitled, &c., are liable in each case at the suit of the person entitled to the game, to a penalty of not exceeding two pounds for the pursuit, and not exceeding one pound for every head of game killed or taken, and costs, and in default, imprisonment not exceeding two months, when the amount exclusive of costs does not reach five pounds; otherwise as laid down in the Summary Jurisdiction Act, 1879, s. 5. (Game Act, 1831, s. 38; S. J. Act, 1884.)

For the procedure for recovery of this penalty, information, limitation of action, appeal, &c. (see p. 255), where the steps necessary to recover all penalties under the Game Act are set out.

2. Under the Ground Game Act, 1880, s. 6 (see p. 49):—

Any person having a right to kill ground game under this Act or otherwise who uses firearms for the purpose at night (as therein defined), or employs spring traps, except in rabbit holes, or poison, is in each case liable to a penalty not exceeding two pounds on summary conviction.

This penalty is recoverable before two justices (S. J. Act, 1879, s. 20) by distress, and in default of distress imprisonment may be imposed. (S. J. Act, 1884; S. J. Act, 1848, ss. 19, 21, as amended by S. J. Act, 1879, s. 21.) Any person may lay an information; the procedure is throughout in accordance with the Summary Jurisdiction Acts, and there is no appeal from a conviction.

Besides the above offences peculiar to tenants, such persons, save that they cannot be prosecuted as trespassers for "entering and being on their land" with any intent, are liable for any other unlawful act that they do on their own land in the same manner as they would be upon others' lands, *e.g.*, for unlawfully taking game by night (Night Poaching Act, 1828), or destroying or taking game eggs where the game does not belong to them. (Game Act, 1831, s. 24.)

CHAPTER IV.

SPORTING TENANTS.

Grant of sporting rights.—The right to sport over others' lands, without any right to take the game killed, is a mere licence of pleasure, and this licence is personal to the licensee himself, but the right to sport over another's lands, and also take the game killed, is a licence of profit not personal to the licensee only, but also exercisable by the licensee's servants, and is a *profit à prendre*: *Wickham* v. *Hawker*, 7 M. & W. 63; *Ewart* v. *Graham*, 7 H. L. C. 331; and as such lies only in grant under seal: *Bird* v. *Higginson*, 2 A. & E. 696; *Brigstocke* v. *Rayner*, 40 J. P. 245. Where, however, in the case of a lease of shooting for two years invalid for want of a seal, the defendant enjoyed the right of sporting on the lands, and for the period mentioned, he was held bound at the end of the term by a covenant, which he had entered into in the invalid lease, to pay compensation for damage done to the crops of the plaintiff's tenants: *Thomas* v. *Fredericks*, 10 Q. B. 775; 16 L. J. Q. B. 393; and in *Adams* v. *Clutterbuck*, 10 Q. B. D. 403, it was held, under similar circumstances, in the case of an invalid lease for three years, that where the defendant had actually enjoyed the shooting

for that period, he could not set up the invalidity of the lease for want of sealing as a defence to an action for breach of a stipulation contained in it, to leave a good breeding stock of game on the ground at the termination of the lease.

An agreement to grant a lease of a right of sporting is an agreement to let an incorporeal hereditament, and as such is a contract or sale of an interest concerning lands within the fourth section of the Statute of Frauds. Thus, where A. agreed verbally with B. to allow B. to share certain shooting rights, and a certain shooting box, and take away part of the game killed, and B. verbally agreed to pay £100; in an action brought against B. for damages for breach of this agreement, it was held that A. could not recover, as the contract was within the Statute of Frauds, and should have been in writing: *Webber* v. *Lee*, 9 Q. B. D. 315.

If an agreement to grant sporting rights be made in writing, it can be enforced on an action for damages upon its breach, although the instrument, through not being under seal, is ineffectual to pass the interest: *Smart* v. *Jones*, 15 C. B. N. S. 717; and even though it has not been made in writing in accordance with the requirements of the Statute of Frauds, yet if it has been part performed by one of the parties to it, specific performance will be decreed: see *MacManus* v. *Cooke*, 35 C. D. 681; but although as between the parties themselves, it would thus appear that an agreement to grant a lease of shooting would be equivalent to a grant under seal, this principle does not apply where the rights of third parties come in question. Thus, a person having the right to shoot over lands for a term of three years by

virtue of an agreement not under seal, has no such interest in land as to be able to claim compensation from a railway company, who takes the lands, for injurious affection under the Lands Clauses Acts: *Bird* v. *G. E. R.*, 19 C. B. N. S. 268, 282; 34 L. J. C. P. 366. *Semble*, that if there had been a grant under seal no compensation would have been recoverable.

And, where a sporting tenant prosecuted the occupier of land (Game Act, 1831, s. 12) for taking game thereon, which had been reserved to the landlord, and merely stated in evidence that he held a grant of the shooting under seal from such landlord, but did not produce the grant, the Court quashed a decision of justices convicting the tenant, on the ground that the sporting tenant had not brought forward sufficient evidence in a criminal case, such as this was, to show that the exclusive right to the game "belonged to him" (sect. 12), and held that such right must be proved rigidly and properly: *Barker* v. *Davis*, 34 L. J. M. C. 140.

Covenants in sporting lease run with the land.—A lease of sporting rights is the grant of an incorporeal hereditament, and as such touches the land. Thus, where the landlord of an estate leased his sporting rights over the land by deed to A. for a term of years, and subsequently assigned his reversion, the reversioner was held entitled to sue A. upon a covenant contained in the lease, that A. would leave the land as well stocked with game at the end of the term as it was when he entered: *Hooper* v. *Clark*, L. R. 2 Q. B. 200; 36 L. J. Q. B. 79.

Where sporting rights are granted to A., and any friend of his, this was held not to limit A. to only one friend at a time: *Gardner* v. *Colyer*, 10 L. T. 715.

Powers and duties of sporting tenants.—Since the Ground Game Act, 1880, became law (see p. 38), the sporting tenant may be restricted in the rights of sporting, which he can obtain by grant, either from the landlord or tenant of lands.

Where the landlord is also the occupier, he may lease the exclusive rights to kill all wild animals, the object of sport upon his land including hares and rabbits, and is under none of the restrictions imposed on tenants as to using spring traps above ground, &c., mentioned in sect. 6 of the Ground Game Act, p. 49: *Smith* v. *Hunt*, 54 L. T. 422, and his grantees will have the same freedom. The lord of a manor is owner of the wastes and commons of the manor, and the commoners are not tenant occupiers of the same. (See p. 15.)

Where the landlord has let his land to a tenant, and reserved the sporting rights, he can, since 1880, only grant them to a third party, subject to the concurrent rights of the tenant to the hares and rabbits, under the Ground Game Act, 1880 (*supra*, p. 42).

Where the tenant is entitled to kill the game upon his land, he may grant his sporting rights to third parties, but despite his grant it is probable that he still retains a right to kill the ground game concurrently with his grantee: *Morgan* v. *Jackson*, (1895) 1 Q. B. 885; 64 L. J. Q. B. 462; Ground Game Act, 1880, ss. 2, 3, p. 26; and an occupier of land, whether the game is reserved to the landlord or not, is subject to the restrictions as to spring traps, &c. (Ground Game Act,

s. 6), and his grantees will be in no better position: *Saunders* v. *Pitfield*, 58 L. T. 108.

Powers with regard to day and night poachers.—A sporting tenant may, like all other persons (*Midelton* v. *Gale*, 8 A. & E. 155), lay an information for trespass in pursuit of game, &c., against poachers on land over which he has the right of sporting, he is also deemed the legal occupier for the purpose of prosecuting such persons, where the occupier of the land has given them licence to take game, woodcocks, snipes, quails, landrails, and rabbits there, if such licence is no defence. (Game Act, 1831, s. 30.) He and his servants may also demand the names and addresses of trespassers by day in pursuit of game, &c., on land over which he shoots, and in default, &c. may arrest them (*ibid.*, s. 31): see p. 85. He and his servants may also demand, and on refusal seize, game (as defined, sect. 2) found on poachers by night or day on such land recently killed (*ibid.*, s. 36, see p. 89), but they are not allowed to search a poacher. Neither a sporting tenant nor his keepers may arrest night poachers (Night Poaching Act, 1828, s. 2), and resistance is justifiable if keepers, who have no right in law, attempt to arrest or search persons: *Reg.* v. *Wood*, 1 F. & F. 470; *Reg.* v. *Wesley*, *ibid.*, 528.

A sporting tenant can only demand the production of a game licence, if he has one himself. (Game Licence Act, 1860, s. 10.)

Prosecuting occupiers.—If a tenant kill "game" upon his land, where it is reserved to the landlord, the landlord's lessee of the sporting-rights may prosecute the

tenant under the Game Act, 1831, s. 12, for doing so, and also for giving other persons leave to do so. If a tenant kill other objects of sport not included in the definition of game (Game Act, s. 2), where the landlord has reserved the sporting rights, the landlord's lessee of those rights has no summary remedy against the tenant, but it is possible that he might have a cause of action against the landlord. This depends on the form of his lease.

No tenant can be prosecuted as a trespasser on his own land. If any person rents shooting rights from a tenant, and the tenant wrongfully sports on the land, the tenant is liable to be prosecuted if he kill "game" (Game Act, 1831, s. 12, 2), and is liable to an action for breach of covenant, if he kill game or any other object of sport in defiance of his express grant. Remarks on sect. 12 will be found on p. 36. A sporting tenant cannot deprive the occupier of his rights under the Ground Game Act, but can lay an information against him for any offence under sect. 6 of that Act. (See p. 49.)

Sporting rights subject to estate management.—A sporting tenant, whether he rents sporting rights over land from the tenant, or from the landlord, can only exercise them as the land may happen to be at the time. His right to shoot, &c. is subject to the right of the landlord to manage his property in the ordinary way, and to that of the tenant to cultivate his land in the ordinary course. Thus, where a landlord having granted to a sporting tenant the right to shoot over certain lands for a term of years (but the lease did not contain a covenant for quiet enjoyment), subsequently issued

particulars of sale of the estate in thirteen lots, which stated that the land was suitable for the erection of villas, and that a road would run through the middle of the estate, but giving notice of the lease of the shooting to purchasers, the Court refused an injunction at the suit of the sporting tenant to restrain the sale for building purposes: *Pattison* v. *Gilford*, L. R. 18 Eq. 259; 43 L. J. Ch. 524. See also *Bird* v. *G. E. R.*, 19 C. B. N. S. 268; 34 L. J. C. P. 366.

The landlord is entitled to cut trees and put up a saw mill, and is not prevented from doing any act in connection with the management of his property, though such acts may affect the sporting rights previously let to a tenant: *Gearns* v. *Baker*, L. R. 10 Ch. 355; 44 L. J. Ch. 334. There was no covenant for quiet enjoyment in this case. It must be understood that there is no reason why a sporting tenant should not insert in the sporting lease stipulations on the part of the landlord, that he will refrain from doing specific acts, which would affect the sporting rights, but, unless there are such special covenants, the lease will be construed in the above manner. So it was held that where A. is tenant of lands to B., who reserves the shooting, and grants it to C., in the absence of special covenants in the lease, there is no implied covenant on A.'s part towards B. that he will keep the land in the same state as it was at the time when B. granted his shooting rights to C. Thus, A. might root up furze or sow down arable lands; B. and C.'s rights of sporting are subject to the reasonable use of the lands by A. for the purposes of cultivation: *Jeffryes* v. *Evans*, 34 L. J. C. P. 261. A sporting tenant must also take reasonable care of standing crops whilst sporting on lands, and will be liable to pay for

unnecessary damage caused to the tenant, *e. g.*, by treading down standing corn, whilst in pursuit of game: *Hilton* v. *Green*, 2 F. & F. 821.

As to the firing of heath, gorse, &c. for the purposes of husbandry, see p. 135.

Overstocking the land with game.—A sporting tenant is in the same position as a landlord or occupier with respect to his rights of stocking land with game. (See p. 52.) He must not cause a nuisance on his land to the damage of his neighbours by laying down upon it a number of birds or rabbits bred elsewhere: *Farrer* v. *Nelson*, *infra*. He is also liable at the suit of the tenant of lands if he rent shooting from the tenant or the landlord of such lands, and bring upon them game to an unreasonable extent without the tenant's leave. (See p. 52.) Thus, he is liable to pay the tenant damages for the injury caused to his crops by the rabbits and the progeny of rabbits procured elsewhere, and turned down on the tenant's lands: *Hilton* v. *Green*, 2 F. & F. 821; or if he breed pheasants elsewhere, and put them in a covert adjoining the tenant's lands, so that they enter and feed on his crops: *Farrer* v. *Nelson*, 15 Q. B. D. 258; 54 L. J. Q. B. 385; 52 L. T. 766 (the judgment in this case is set out p. 53); but there is, it seems, no objection to his shifting game bred on one part of the farm to another part: *Birkbeck* v. *Paget*, 31 Bea. 403; and it is not a nuisance to allow rabbits to breed naturally on land: *Bowlston* v. *Hardy*, Cro. Eliz. 547; nor presumably any other game.

Where a sporting tenant had covenanted with his lessor in a sporting lease to keep down the rabbits, so that no appreciable damage should be done to the crops

of the lessor's tenants, in an action by the lessor for the damage, which rabbits had caused, it being found that the plaintiff, the lessor, was not compellable to compensate the tenants for such damage, was not trustee for the tenants, and had suffered no damage personally, it was held that he was entitled to nominal damages only: *West* v. *Houghton*, 4 C. P. D. 197; 40 L. T. 364.

As to enticing game from a neighbour's land, or using means to injure his shooting, see p. 55.

CHAPTER V.

TRESPASS IN PURSUIT OF GAME.

Trespass generally.—Every unwarrantable entry upon another's land, for the purpose of searching for or taking any game, or for any other purpose, is a trespass at common law, and every such entry carries along with it necessarily some damage, for, if nothing else be done, the herbage is trodden down and bruised: Blackstone's Com. vol. iii. p. 209. For every such unwarrantable entry an action of trespass will lie for breaking and entering the plaintiff's close, and the plaintiff is entitled, if to nothing more, at any rate to nominal damages. Furthermore, in order to support such an action, it is not necessary that the defendant should be shown to have entered personally, though it will be seen hereafter that, for the purpose of prosecutions for trespass in pursuit of game (Game Act, 1831, s. 30), a personal entry is necessary. If a person shoots into the land of another and strikes the soil with the shot, he is guilty of breaking and entering the land: *Pickering* v. *Rudd*, 4 Camp. 219; but to shoot into the air, or pass through the air over another's close can hardly be considered a breaking and entering: *Kenyon* v. *Hart*, 34 L. J. M. C. 87; 6 B. & S. 249. To shoot in the air so as to disturb a neighbour's game, and for the purpose of disturbing it, is the subject of an action for maliciously injuring a

person in his trade: *Carrington* v. *Taylor*, 11 East, 571; *Ibbotson* v. *Peat*, 34 L. J. Ex. 118. (See p. 55.) As to trees overhanging a neighbour's land, see *Lemmon* v. *Webb*, (1894) 3 Ch. 1.

To follow hounds over another's lands without his express or tacit consent is undeniably a trespass: *Paul* v. *Summerhayes*, L. R. 4 Q. B. D. 9; 48 L. J. M. C. 33; 39 L. T. 574; but further than this, a master of hounds who invites persons to hunt with them, and sends them over the lands of another without that other's consent is equally guilty of trespass, though he himself remain off them: *Baker* v. *Berkeley*, 3 C. & P. 32. (See p. 51.)

If A. gives leave to B. to go on land, in which A. has no right, and B. goes there, A. will not be a co-trespasser with B., but if A. orders and authorizes B. to go, A. is a joint-trespasser; this being an authority, and not a mere licence: *Robinson* v. *Vaughton*, 8 C. & P. 252.

It is very doubtful if it is a trespass by breaking and entering, when a dog unauthorized by its owner enters another's land, but if a dog is in the habit of chasing game to the owner's knowledge, an action will lie against him, if he negligently permit the dog to roam at will in the neighbourhood of another's game preserves: *Read* v. *Edwards*, 34 L. J. C. P. 31; and cases there cited.

Possession, actual or constructive, is necessary to entitle persons to proceed against trespassers. The owner of land is *primâ facie* the person in possession; if he demise it, the tenant. But the possession need not be exclusive. Thus, the owner of the soil of a highway may take action against persons who use the highway for an unlawful purpose: *Harrison* v. *Duke of Rutland*, (1893) 1 Q. B. 142, and the lord of a manor is the person in

possession of the wastes of the manor, although commoners may have rights of pasturage thereon: *Lonsdale* v. *Rigg*, 26 L. J. Ex. 196. Conversely, the lord of a manor and the landlord of lands, if they enter land for purposes for which they have not reserved a right of entry, are trespassers: *Bruce* v. *Hellliwell*, 5 H. & N. 609; *Pickering* v. *Noyes*, 4 B. & C. 639. Commoners who have merely a right of pasturage (*Lonsdale* v. *Rigg*, *supra*), and passengers along the highway, who have merely the right to use the highway for passing and re-passing, and such kindred lawful purposes (*Harrison* v. *Duke of Rutland*, *supra*) are trespassers, if they enter the common or highway in search or pursuit of game. See also *R.* v. *Pratt*, 24 L. J. M. C. 113; 4 E. & B. 860, p. 76.

Remedies against trespassers.—The proprietor of lands or his servants, on finding a trespasser on his land have no power at common law to summarily arrest such trespasser, but may order him to leave, and, if he do not depart on request, may then use that force which is absolutely necessary to push him off the property. They may not use dangerous weapons to do so, and if he resist effectually, their proper course is to summon aid: *Ilott* v. *Wilks*, 3 B. & Ald. 304, 317; *Harrison* v. *The Duke of Rutland*, (1893) 1 Q. B. 142.

Man traps.—Formerly owners and occupiers of land might protect the same against trespassers by placing man traps and such like instruments there (see *Ilott* v. *Wilks*, *supra*), but this is now forbidden by 24 & 25 Vict. c. 100, s. 31, which provides, that—

Whosoever shall set or place, or cause to be set or

placed any spring gun, man trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour (54 & 55 Vict. c. 69), and whosoever shall knowingly and wilfully permit any such spring gun, man trap, or other engine, which may have been set or placed, in any place then being in, or afterwards coming into, his possession or occupation, by some other person, to continue so set or placed, shall be deemed to have set and placed such gun, trap, or engine with such intent as aforesaid: provided that nothing in this section contained shall extend to make it illegal to set or place any gin or trap, such as may have been or may be usually set or placed with the intent of destroying vermin: provided also that nothing in this section shall be deemed to make it unlawful to set or place, or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap, or other engine, which shall be set or placed, or caused or continued to be set or placed, in a dwelling-house, for the protection thereof.

As to "spring guns," see *Wootton* v. *Dawkins*, 2 C. B. N. S. 312; as to dog spears, and trespassing animals in general, see Chap. XXI., and *Jordin* v. *Crump*, 8 M. & W. 782.

Barbed wire.—Where barbed wire is placed on land adjoining a highway so as to be a nuisance, the local authority may serve a notice in writing on the occupier of such land ordering him to remove it, and on his failure to do so, may apply to the justices for an order to that effect. Before they can make such an order the

justices must be satisfied that the wire "may probably be injurious to persons, or animals using such highway." If the defendant fail to comply with an order of the justices made upon him for removal of the nuisance, the local authority may take all necessary steps to abate it. (Barbed Wire Act, 1893 (56 & 57 Vict. c. 32).)

The procedure for an order under this Act is regulated by the Summary Jurisdiction Acts. There is no appeal from such an order, but the justices may state a case on a point of law. (S. J. Act, 1879, s. 33.)

Action at law for breaking close.—For every trespass to land in search of game, alive or dead, or any other purpose, an action at law will lie for breaking close, but the Game Act, 1831, s. 46, provides—

That nothing in this Act contained shall prevent any person from proceeding by way of civil action to recover damages in respect of any trespass upon his land, whether committed in pursuit of game or otherwise, save and except that where any proceedings shall have been instituted under the provisions of this Act against any person for or in respect of any trespass, no action at law shall be maintainable for the same trespass by any person at whose instance or with whose concurrence or assent such proceedings shall have been instituted, but that such proceedings shall in such case be a bar to any such action, and may be given in evidence under the general issue.

It is not necessary that the justices should have convicted the defendant of trespass in pursuit of game under this Act to bar a subsequent action; an adjudication of dismissal will suffice. Where an information for trespass under sect. 30 is laid by a

stranger without the consent of the person entitled to authorize the defendant to sport, an action is not barred at the suit of that person: *Robinson* v. *Vaughton*, 8 C. & P. 252. The mere institution of proceedings on the part of the person entitled to sue will bar a subsequent action. The institution of proceedings means the commencement, and it is therefore doubtful if the laying of an information and issue of a summons would not be sufficient to bar a subsequent action at the suit of the party thus commencing a prosecution, though he subsequently withdraw: *Blackborne* v. *Blackborne*, L. R. 1 P. & D. 563. As to what is a dismissal of the charge, see *R.* v. *Brackenridge*, 48 J. P. 293.

Unless an action is barred statutorily under the above section, it is quite optional with a person on whose land persons have trespassed in pursuit of game, whether he take criminal or civil proceedings against them, and this is so it appears, even if they have committed a felony in the course of the trespass, though the matter is not free from doubt: see *Roope* v. *D'Avigdor*, 10 Q. B. D. 413; *Midland Insurance Co.* v. *Smith*, 6 Q. B. D. 574. As a rule, before an action is brought against any person for trespass, it is advisable to give such person notice not to trespass on the lands therein specified, and inform him that, if he do so, proceedings will be taken.

The owner of a free-warren, which is an incorporeal hereditament, can maintain an action for breaking and entering his free-warren against all persons, who wrongfully go in search or pursuit of beasts or birds of warren on lands over which his free-warren rights extend: *Carnarvon* v. *Villebois*, 13 M. & W. 313; *Lord Dacre* v. *Tebb*, 2 W. Bl. 1151; but not for breaking close: *Welden* v.

Bridgwater, Cro. Eliz. 421. See as to "Free-warren," p. 17.

An action of trespass can be brought in the High Court, or where the damage claimed does not exceed 50*l.*, in the County Court (51 & 52 Vict. c. 43, s. 56), unless the title to any corporeal or incorporeal hereditament of the yearly value of more than 50*l.* is directly in question (*Ibid.*, sect. 60); if such title shall incidentally come in question, the County Court may try the action on the written consent of both parties. (*Ibid.*, sect. 61.) If an action of trespass which could have been commenced in the County Court be brought in the High Court, and the plaintiff recover less than ten pounds, he is not entitled to any costs, and if ten or more, but less than twenty, only costs on the County Court scale, unless the judge certifies in either case that there was sufficient reason for bringing the action in the High Court. (*Ibid.*, sect. 116.)

Day Poaching.

Trespass in Pursuit of Game.—It has been observed in the previous Chapter on "Trespass," that every unwarrantable entry on another's land is the subject of an action for breaking close. It remains now to consider under what circumstances, and by what methods, persons who trespass on others' lands in pursuit of game by day or night, are amenable to the criminal law. With regard to trespasses in pursuit of game by day, the Game Act, 1831, s. 30, provides as follows:—

And whereas, after the commencement of this Act, game will become an article which may be legally bought and sold, and it is therefore just and reasonable

to provide some more summary means than now by law exist for protecting the same from trespassers; be it therefore enacted, that if any person whatsoever shall commit any trespass by entering or being, in the daytime, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, such person shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding two pounds, as to the justice shall seem meet, together with the costs of the conviction:

And in default, imprisonment with hard labour not exceeding two months. (Sect. 38.) Section 38 has been repealed only where the fine amounts to five pounds or more.

Section 30 then continues—

And that if any persons to the number of five or more together shall commit any trespass, by entering or being, in the daytime, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, each of such persons shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the said justice shall seem meet, together with the costs of the conviction:

And in default, imprisonment with hard labour not exceeding two months, where the penalty, exclusive of costs, does not amount to 5*l.* (sect. 38); if otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5 (sect. 38, as repealed by the S. J. Act, 1884).

For the recovery of the above penalties, manner of laying the information, procedure generally, claim of right, appeal, &c., see "Recovery of Penalties under the Game Act," p. 255.

The section then proceeds as follows:—

Provided always, that any person charged with any such trespass shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law for such trespass; save and except that the leave and licence of the occupier of the land so trespassed upon shall not be a sufficient defence in any case where the landlord, lessor, or other person shall have the right of killing the game upon such land by virtue of any reservation or otherwise, as hereinbefore mentioned; but such landlord, lessor, or other person shall, for the purpose of prosecuting for each of the two offences herein last before mentioned, be deemed to be the legal occupier of such land, whenever the actual occupier thereof shall have given such leave or licence; and that the lord or steward of the Crown of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, shall be deemed to be the legal occupier of the land of the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty.

Daytime.—The Game Act, s. 34, provides, that for the purposes of this Act the daytime shall be deemed to commence at the beginning of the last hour before sunrise, and to conclude at the expiration of the first hour after sunset.

Game.—Section 2 provides that the word "game" shall, for the purposes of this Act, be deemed to include hares, pheasants, partridges, grouse, heath or moor-game, blackgame, and bustards.

Trespass by entering or being.—The words "entering" and "being" constitute only one offence: *R.* v. *Mellor*, 2 Dow. P. C. 173. The offence created by this section is that of personal entry in pursuit of game.

In order to support a conviction, the offender must have been personally on the land on which the offence is alleged to have been committed, and no constructive entry will be sufficient: *Reg.* v. *Pratt*, 24 L. J. M. C. 113; *Mayhew* v. *Wardley*, 8 L. T. N. S. 504; but "any personal entering or being upon land, which would be a trespass at common law, and with respect to which an action might be brought, is, I think, by statute made cognisable by justices, if such trespass is committed in search or pursuit of game": *per* Wightman, J., in *R.* v. *Pratt*, *supra*.

A personal entry being necessary, where A. stands on his own land and shoots into, but never enters, B.'s land, although an action of trespass might lie against him (*Pickering* v. *Rudd*, 4 Cam. 220), it is not such a trespass as is cognisable before justices: *R.* v. *Alsop*, 1 Show. 339; *Mayhew* v. *Wardley*, 8 L. T. N. S. 504.

Land.—As to the respective rights of the landlord and tenant over land, see Chap. III.

Hedges.—The rule with regard to the presumption of the ownership in hedges is that where two closes are divided by a hedge and ditch, the hedge is presumed to belong to the person in whose field the ditch is not, but if there are two ditches on either side of a hedge, the ownership of the hedge depends on the past exercise of rights over it: Roscoe's N. P. Ev. 16th Ed. p. 913.

Highways.—The public merely have a right to use a highway for all usual lawful purposes, but, subject to the public easement, the highway is presumed to be land in the possession of adjoining owners and occu-

piers. A person who goes on the highway for the purpose of searching for game is a trespasser on the soil of the owner of the highway within the meaning of sect. 30 (*supra*) : *R.* v. *Pratt*, 24 L. J. M. C. 113 ; 4 E. & B. 860 ; cp. *Harrison* v. *Duke of Rutland*, (1893) 1 Q. B. 142.

Foreshore.—In the absence of all evidence of particular usage, the extent of the right of the Crown to the seashore landwards is *primâ facie* limited by the line of the medium high tide between the springs and the neaps, because all land below that line is more often covered by water than not, and consequently not capable of being occupied : *Att.-Gen.* v. *Chambers*, 4 D. M. & G. 206, 215. A grant of the foreshore to the lord of the manor by the Crown is clear evidence that it is vested in him ; and where the grant itself cannot be produced, evidence is admissible from which such a grant may be presumed : *Att.-Gen.* v. *Emerson*, (1891) A. C. 649 ; 61 L. J. Q. B. 79 ; 65 L. T. 564.

Pursuit of game.—Game is defined above, sect. 2, p. 75.

Trespass in pursuit of game means in pursuit of live game when unreclaimed. It is not poaching to enter a field for the purpose of stealing tame birds from a coop : *R.* v. *Garnham*, 8 Cox, C. C. 451.

If A. see a dead pheasant in B.'s field, and walk in and pick it up, though he may be possibly guilty of larceny (see "Property in Game," p. 9), he is not committing an offence under sect. 30, unless he has himself just killed the bird, and is entering for the purpose of picking it up, so that the shooting and

picking up constitute one continuous act: *Osbond* v. *Meadows*, 31 L. J. M. C. 238; 6 L. T. N. S. 290. Where A. is sporting on his own land, and a bird rise, and A. kill it when it has crossed the boundary into B.'s land, the justices were held right in deciding that this is not an offence under the section, the Court distinguishing this case from *Osbond* v. *Meadows*, on the ground that when the pheasant rose, and A. fired, he did not contemplate going on B.'s land to pick it up. There was, in fact, no continuous act of poaching: *Kenyon* v. *Hart*, 34 L. J. M. C. 87.

Again, where a keeper went with a dog and gun to pick up birds, which he believed had fallen dead in a neighbour's covert after his master had been shooting his own coverts, the justices were held right in deciding that the keeper was not in pursuit of game under sect. 30: *Tanton* v. *Jervis*, 43 J. P. 784.

If a keeper walks round a neighbour's lands after his master has been shooting, to drive back the birds which have strayed, he might be liable to an action of trespass; but unless he took a gun with him he could hardly be said to be in pursuit of game.

It is a question for the justices to determine whether a defendant is in pursuit of game or not. If A. owns a hedge, he is clearly a trespasser in pursuit of game if he cross it, and pass into B.'s field for the purpose of shooting the game which the beater on A.'s land may put out of the hedge: *Philpot* v. *Bugler*, 54 J. P. 646. It is only by the courtesy of neighbours that a person can stand on his neighbour's land for the purpose of killing game started on his own property; for such a person is clearly a trespasser at common law, and it would be difficult to convince justices that such

a trespass could not have been in pursuit of game on the neighbour's land.

A defendant may be convicted under sect. 30 without being actually seen pursuing game. If a gun goes off in a wood, and he is seen leaving it with a gun and dogs, or a gun is heard to be fired where he has been seen standing, and a bird recently killed is picked up close by the spot, such facts are admissible matters, upon which justices can base their conclusion: *Burrows* v. *Gillingham*, 57 J. P. 423; *Mayhew* v. *Wardley*, 8 L. T. N. S. 504. On the other hand, where a person was seen trespassing with dogs on land where game was known to be, but his intention was doubtful, and the justices dismissed the case, the Court refused to interfere: *Dyer* v. *Park*, 38 J. P. 294; *Countess of Kingston* v. *O'Neill*, 6 L. R. Ir. 101.

Aiders and abettors.—Although a personal entry is necessary to bring a defendant within the terms of sect. 30, it was held, before 1848, that where out of a party of persons some trespass in pursuit of game, and others stand outside the land to assist or give an alarm, all are equally guilty: *Passey's case*, 7 C. & P. 282; cp. *R.* v. *Whittaker*, 17 L. J. M. C. 127. The proper course however, now, is to lay an information against such persons under the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5, which punishes with the same penalty as the principals such persons as aid, abet, counsel, or procure the commission of an offence of this nature.

Thus, where A. drove B. along the road, the conveyance stopped, B. got out, shot a hare in adjoining land, and gave it to A. in the cart, who thereupon drove

along the road, A. was held rightly convicted of aiding and abetting B. to commit the offence of trespass in pursuit of game: *Stacey* v. *Whitehurst*, 34 L. J. M. C. 94; 11 L. T. 710. "Aid, abet, counsel, and procure" constitute only one offence: *Ibid.* See also *R.* v. *Littlechild*, L. R. 6 Q. B. 293; and other cases cited p. 256.

By way of defence.—The alleged trespasser may prove, by way of defence, any matter which would have been a defence to an action at law for such trespass.

This gives the justices power to go into evidence of any matter which would have been such a defence, but it does not follow that they can, against the will of the party charged, try that question, and it does not prevent their jurisdiction being ousted by a *bonâ fide* claim of title: *R.* v. *Cridland*, 27 L. J. M. C. 28; 7 E. & B. 853. See "Claim of Right," p. 260, and the cases there cited.

Ignorance is no defence to a charge under sect. 30 of trespass in pursuit. Every person who goes on land to sport must take care that he has the leave of the person qualified to give it. The prosecutor need not prove *mens rea*, and it is no defence on the part of the accused that he *bonâ fide* believed himself authorized, if in fact the authority under which he acted is not a good authority: *Morden* v. *Porter*, 29 L. J. M. C. 213; *Watkins* v. *Major*, L. R. 10 C. P. 662; 44 L. J. M. C. 164.

No tenant can be prosecuted for trespass in pursuit of game on his own land, for he has a right to enter and be there. A game owner who is aggrieved by the acts of a tenant must proceed under sect. 12 against

him, if that section applies; otherwise, possibly, by action for breach of his reservation or grant. (See p. 36.) A landlord may be a trespasser on his tenant's lands, if he have no right of entry for the purpose of taking game, except he be lord of a manor. For certain exceptions to the application of sect. 30, see sect. 35, *post*, p. 82.

Leave and licence of the occupier.—The various rights of landlords, tenants, and sporting tenants have been fully treated (Chapters III., IV.).

The onus lies on a person charged with trespass under this section of showing that he is a person authorized in a proper manner by the owner of the game, or the tenant, and not on the prosecutor to negative such authority (sect. 42). The authority must precede the act complained of: *Morden* v. *Porter*, 29 L. J. M. C. 213.

Tenants who wrongfully authorize persons to take game on their land are liable to penalties under sect. 12. (See p. 34.)

Where the "game" only is reserved to the landlord, as rabbits are not included in the definition (sect. 2), a tenant may kill them himself or authorize his servants to do so for him: *Spicer* v. *Barnard*, 28 L. J. M. C. 176; *Padwick* v. *King*, 29 L. J. M. C. 42; but not strangers: for where the game is reserved the licence of the tenant is no defence to strangers trespassing in pursuit of it, *or* of woodcocks, snipes, quails, landrails, or rabbits: *Pryce* v. *Davies*, 35 J. P. 374; *Morden* v. *Porter*, 29 L. J. M. C. 213.

See further on this subject, p. 35.

The lord of a manor includes lady (sect. 2).

As to manors, wastes, commons, see Chap. III.

Exceptions of certain trespassers.—Sect. 35 provides—

Provided always, and be it enacted, that the aforesaid provisions against trespassers and persons found on any land shall not extend to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare, or fox already started upon any other land, nor to any person *bonâ fide* claiming and exercising any right or reputed right of free warren or free chase, nor to any gamekeeper lawfully appointed within the limits of any free warren or free chase, nor to any lord or any steward of the Crown of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, nor to any gamekeeper lawfully appointed by such lord or steward within the limits of such manor, lordship, or royalty, or reputed manor, lordship, or royalty.

Persons following hounds over lands, without the express or tacit consent of the owner or occupier, are liable to an action of trespass: *Paul* v. *Summerhayes*, 4 Q. B. D. 9; 48 L. J. M. C. 33.

As to free-warren, manors, see Chap. III.; gamekeepers, Chap. XIII.

The above section only extends to gamekeepers fully deputed or appointed, and not to mere servants of the persons mentioned.

All persons excepted from the provisions of sect. 30 as to trespass on land in pursuit of game are nevertheless liable to an action at law, p. 71.

Trespassers in pursuit in royal forests.—Sect. 33 provides as follows:—

That if any person whatsover shall commit any tres-

pass, by entering or being, in the day-time, upon any of his Majesty's forests, parks, chases, or warrens, in search or pursuit of game, without being first duly authorized so to do, such person shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding two pounds, as to the justice shall seem meet, together with the costs of the conviction.

And in default imprisonment with hard labour for not exceeding two months (sect. 38). For the recovery of the penalty, see p. 255.

As to forests, &c., see p. 19.

The royal forests are in the hands of the Commissioners of Woods and Forests, and are regulated by 10 Geo. 4, c. 50.

It is difficult to understand why this section was inserted, as at first sight it appears to be covered by the provisions of sect. 30. It seems, however, to apply to forests only, while sect. 30 applies to all other lands, and to apply to all persons, not excepting lords of manors, their gamekeepers, and packs of hounds, in pursuit of game in the forest (sect. 35), whilst such persons are excepted from proceedings under sect. 30. For it will be noticed that sect. 35 only applies to trespassers on "land," and the words "land" and also "forest" are both used in sections which are intended to apply to trespassers in forests as well as on other lands, *e. g.*, 31, 32, 36.

On the other hand, it is curious that trespassers in forests can only be prosecuted for taking "game" under this section, and not woodcocks, snipes, quails, landrails, or rabbits. These last are beasts of warren (see p. 20), and it is curious to omit them. In short, it cannot be

said to be at all clear whether sect. 30 applies to forests or not, and the intention of the legislature in inserting sect. 33 in the Act is a matter which would admit of considerable argument. It will be noticed that it is no greater offence under sect. 33 to trespass to the number of five or more, than less than five (cp. sect. 30), unless violence be used (sect. 32), nor are a game and gun licence forfeited for conviction under this section as they are for conviction for any offence under sect. 30. (Vide *infra.*)

As to killing deer in forests, see "Deer," p. 155.

Forfeiture of licences on conviction.—If the holder of a gun or game licence be convicted of any offence under sect. 30 above, his game or gun licence are from thenceforth null and void. (Game Licence Act, 1860, s. 11; Gun Licence Act, 1870, s. 11.)

Such a person, therefore, after a conviction, if he intend to kill game or carry a gun, will require a fresh licence to do so for the remainder of the term unexpired, during which his licence would have been available had it not been forfeited, and in default of taking out such a fresh licence he may be liable to the penalties prescribed in the Game and Gun Licence Acts, and the Game Act, 1831, s. 23.

Arrest of day poachers.—The Game Act, s. 31, provides—

And be it enacted, that where any person shall be found on any land, or upon any of his Majesty's forests, parks, chases, or warrens, in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the

right of killing the game upon such land, by virtue of any reservation or otherwise as hereinbefore mentioned, or for the occupier of the land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any person authorized by either of them, or for the warden, ranger, verderer, forester, master-keeper, under-keeper, or other officer of such forest, park, chase, or warren, to require the person so found forthwith to quit the land whereon he shall be so found, and also to tell his christian name, surname, and place of abode; and in case such person shall, after being so required, offend by refusing to tell his real name or place of abode, or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery, or by wilfully continuing or returning upon the land, it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him or cause him to be conveyed as soon as conveniently may be before a justice of the peace; and such offender (whether so apprehended or not), upon being convicted of any such offence before a justice of the peace, shall forfeit and pay such sum of money, not exceeding five pounds, as to the convicting justice shall seem meet, together with the costs of the conviction: Provided always, that no person so apprehended shall, on any pretence whatsoever, be detained for a longer period than twelve hours from the time of his apprehension until he shall be brought before some justice of the peace; and that if he cannot, on account of the absence or distance of the residence of any such justice of the peace, or owing to any other reasonable cause, be brought before a justice of the peace within such twelve hours as aforesaid, then the person so apprehended shall be discharged, but may nevertheless be proceeded against for his offence by summons or warrant, according to the provisions hereinafter mentioned, as if no such apprehension had taken place.

For the recovery of the above penalty, see p. 255.

In default of payment of the fine imposed imprisonment with hard labour for not exceeding two months may be imposed where such fine, exclusive of costs, does not amount to 5*l.*, if otherwise according to the scale in S. J. Act, 1879, s. 5. (Sect. 38 partly repealed by S. J. Act, 1884.)

Any person may order a trespasser to quit his land and remove him if he refuses (see p. 69), but the offence, for which a trespasser may be arrested under this section, is the refusal on being so found to give his name and address, or giving an illusory or absurd name and address, or whether he has given his name and address or not, wilfully continuing on or returning upon the same land, upon which he had previously been challenged.

Decisions vary as to whether it is necessary, in order to entitle a person to arrest a trespasser, that the trespasser should have been required to quit the land as well as give his name and address. Common sense would seem to suggest that it is not necessary: *R.* v. *Prestney*, 3 Cox, C. C. 505, note (*a*); because it is difficult to imagine that an offender, who refuses to give his name and address, should be invited to escape: see, however, *R.* v. *Long*, 7 C. & P. 314.

There is a somewhat similar demand to be made on persons doing any act on land which requires a licence to kill game: Game Licence Act, 1860, s. 10; *Molton* v. *Rogers*, 4 Esp. 215. See also *Scarth* v. *Gardener*, 5 C. & P. 38. "Wilfully continuing or returning" applies only to the same land on which the trespasser was previously found: *R.* v. *Long*, *supra*.

Who may arrest.—It will be seen that the right to arrest trespassers under this section is strictly confined to the parties and their servants mentioned in the section. Any other person than those who have a right to the game at common law can acquire such right only by grant. (See p. 58.) A mere licensee could not apprehend trespassers, nor could his servants: cp. under the Night Poaching Acts, 1828, s. 2, *R.* v. *Addis*, 6 C. & P. 388; and if they attempted to do so, resistance would be justifiable: cp. *R.* v. *Wood*, 1 F. & F. 470.

Seven years' exercise of sporting rights over land by a master has been held to be good *primâ facie* evidence of the right of a servant to take game from a trespasser: sect. 36; *R.* v. *Wall*, 2 Cox, C. C. 288; and presumably would be sufficient under this section; but in proceedings against a tenant under sect. 12, a person, who holds sporting rights on the tenant's land by grant, charter or Act of Parliament, must prove his title strictly: *Barker* v. *Davis*, 34 L. J. M. C. 140.

No person is entitled to seize a trespasser's gun under this section.

A constable cannot arrest persons for trespassing under the above section unless specially authorized by the persons mentioned, but the employment of the police to effect arrests in matters connected with game is not looked on with favour. A constable who sees persons poaching can always lay an information, or proceed under the Poaching Prevention Act, 1862. (See p. 110.)

As to "*reasonable cause*" why the offender cannot be brought before a justice, see *Evans* v. *M'Loughlan*, 4 L. T. N. S. 31.

Proceedings taken against persons for any act done in intended execution of this Act must be instituted within

six months. (Public Authorities Protection Act, 1893, repealing sect. 47 of this Act. See p. 270.)

Persons excepted by sect. 35 cannot be arrested under this section; but see notes to sect. 33, p. 83.

Five men armed using violence.—Section 32 provides as follows:—

That where any persons, to the number of five or more together, shall be found on any land, or in any of his Majesty's forests, parks, chases, or warrens, in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, any of such persons being then and there armed with a gun, and such persons or any of them shall then and there, by violence, intimidation, or menace, prevent or endeavour to prevent any person authorized as hereinbefore mentioned from approaching such persons so found, or any of them, for the purpose of requiring them or any of them to quit the land whereon they shall be so found, or to tell their or his christian name, surname, or place of abode respectively, as hereinbefore mentioned, every person so offending by such violence, intimidation, or menace as aforesaid, and every person then and there aiding or abetting such offender, shall, upon being convicted thereof before two justices of the peace, forfeit and pay for every such offence such penalty, not exceeding 5*l.*, as to the convicting justices shall seem meet, together with the costs of the conviction; which said penalty shall be in addition to and independent of any other penalty to which any such person may be liable for any other offence against this Act.

In default of payment, where the fine, exclusive of costs, does not amount to 5*l.*, imprisonment may be imposed for a term not exceeding two months with hard labour (sect. 38): where otherwise, according to the

scale in the Summary Jurisdiction Act, 1879, s. 5 (sect. 38, in part repealed by S. J. Act, 1884).

The additional penalties might be under sects. 30 and 33.

For the recovery of the above penalty, see p. 255.

This section does not apply to the persons excepted by sect. 35; but as to forests, see notes to sect. 33, p. 83.

It would not appear to be necessary that more than one of such persons should be armed with a gun to bring the whole party within the section, provided also that any one of them uses violence, &c. to prevent approach: cp. under the Night Poaching Acts, *R.* v. *Goodfellow*, 1 Den. C. C. 81, p. 99.

Seizing game recently killed from trespassers.—Sect. 36 provides as follows—

That when any person shall be found by day or by night upon any land, or in any of his Majesty's forests, parks, chases, or warrens, in search or pursuit of game, and shall then and there have in his possession any game which shall appear to have been recently killed, it shall be lawful for any person having the right of killing the game upon such land, by virtue of any reservation or otherwise, as hereinbefore mentioned, or for the occupier of such land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any officer as aforesaid of such forest, park, chase, or warren, or for any person acting by the order and in aid of any of the said several persons, to demand from the person so found such game in his possession, and in case such person shall not immediately deliver up such game, to seize and take the same from him, for the use of the person entitled to the game upon such land, forest, park, chase, or warren.

Day is defined by sect. 34, and night will therefore mean the remaining portion of the twenty-four hours.

As to night poaching, see Chap. VI.

It must be observed that only game, as defined by sect. 2, can be seized.

The right of seizure does not extend to searching the trespasser for game. If the parties authorized can see the game on the trespasser they may seize it; to search him on suspicion is a power not given to any person by the Game Acts, except to a constable under the Poaching Prevention Act, 1862, and then only under the circumstances there mentioned.

The demand of the game should be made on the land where the parties are found, and must precede the seizure; it should be a demand on behalf of the person entitled to the game: *Wisdom* v. *Hodson*, 3 Tyr. 811.

Seven years' exercise of the shooting rights by a master has been held to be good *primâ facie* evidence of the right of a servant to seize game under this section: *R.* v. *Wall*, 2 Cox, C. C. 288; but in a prosecution of a tenant of lands under sect. 12 by the sporting tenant over these lands, it was held that the latter must prove his title strictly by producing his grant: *Barker* v. *Davis*, 34 L. J. M. C. 140.

For proceedings against persons acting in the intended execution of this Act, see Public Authorities Protection Act, 1893, p. 270, repealing sect. 47 of this Act.

CHAPTER VI.

NIGHT POACHING.

Shooting and sporting by night.—Before dealing with the enactments as to night poaching, it is convenient here to recapitulate one or two provisions as to taking and killing game at night.

No person may use a gun or firearms for the purpose of killing game (as defined sect. 2, Game Act, 1831) by night. (Hares Act, 1848, s. 5, see p. 29.)

Tenants may not use firearms at night for the purpose of killing ground game (Ground Game Act, 1880, s. 6, see p. 49); and, lastly, it is a misdemeanour to take or kill hares or rabbits in a warren at night unlawfully. (Larceny Act, 1861, s. 17, see p. 130.)

Night poachers.—The Game Act deals only with poachers by day, except sect. 36, which authorizes the seizure of game from trespassers by day or night.

The principal Act relating to night poaching is the Night Poaching Act, 1828, but this is modified by the Night Poaching Act, 1844. This latter Act, however, merely extends the remedies provided in the first paragraph of the former Act with regard to land, to highways, and allows the power of arrest, provided by sect. 2, to be exercised in such highways.

It will be convenient here to read the two Acts together; they will be found set out separately in the Appendix.

The Night Poaching Act, 1828, provides as follows:—

Whereas an Act was passed in the fifty-seventh year of the reign of his late majesty King George III., and whereas the practice of going out by night for the purpose of destroying game has, nevertheless, very much increased of late years, and has, in very many instances, led to the commission of murder, and other grievous offences: and it is expedient to repeal the said recited Act, and to make more effectual provisions than now by law exist for repressing such practice. Be it enacted, that the said recited Act shall be, and the same is, hereby repealed, except so far as the same repeals any other Acts: And if any person shall after the passing of this Act by night unlawfully take or destroy any game or rabbits in any land, whether open or enclosed:

Or (N. P. Act, 1844), on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such land into any such public road, highway or path:

Or, shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument for the purpose of taking or destroying game—

such offender shall upon conviction thereof before two justices of the peace be committed for the *first* offence to the common gaol, or house of correction, for any period not exceeding three months, there to be kept to hard labour (or without: S. J. Act, 1879, s. 4), and, at the expiration of such period, shall find sureties in five pounds each, or one surety in ten pounds, for his not so offending again for the space of one year next following, and, in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found.

The justices may, in lieu of the above imprisonment,

fine the offender any sum not exceeding twenty-five pounds, and in default order him to be imprisoned without hard labour for a term according to scale. (S. J. Act, 1879, ss. 4, 5.) They may dispense with the order as to sureties. (*Ibid.*, s. 4.) The Summary Jurisdiction Act, 1879, s. 17, does not apply to a case of imprisonment in default of finding sureties, and a defendant cannot claim to be tried by a jury under that section as being liable to imprisonment for more than three months: *Williams* v. *Wynne*, 57 L. J. M. C. 30; 52 J. P. 344.

And in case such person shall so offend a *second* time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour: and at the expiration of such period shall find sureties by recognizance or bond as aforesaid, himself in twenty pounds, and two sureties in ten pounds each, or one surety in twenty pounds, for his not so offending again for the space of two years next following, and in case of not finding such sureties, shall be further imprisoned, and kept to hard labour for the space of one year, unless such sureties are sooner found.

In lieu of the term of imprisonment for six months, the justices may fine the defendant any sum not exceeding twenty-five pounds, and in default of payment order him to be imprisoned according to scale. (S. J. Act, 1879, ss. 4, 5.) They may dispense with the order as to sureties. (*Ibid.*, s. 4.) The defendant can claim to be tried by a jury. (*Ibid.*, s. 17.)

And in case such person shall so offend a *third* time, he shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the

Court, to be (transported beyond seas, now 20 & 21 Vict. c. 3) kept in penal servitude for seven years, or to be imprisoned and kept to hard labour in the common gaol, or house of correction, for any term not exceeding two years.

For the recovery of the above penalties, limitation of time for proceeding, and procedure, see p. 104, *post.*

Night is defined in sect. 12, which provides that for the purposes of this Act the night shall be considered, and is hereby declared, to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

Game.—Sect. 13 provides that, for the purposes of this Act, game shall be deemed to include hares, pheasants, partridges, grouse, heath or moorgame, blackgame, and bustards.

Under the above section it will be seen that two offences are created—(1) unlawfully taking or destroying game or rabbits on open or enclosed land, or highways, gates, &c.; (2) entering or being on open or enclosed land (but not highways), with a gun, &c., for the purpose of taking or destroying "game" (but not rabbits).

1. Unlawfully taking.—This means unlawfully catching (*R.* v. *Glover*, R. & R. 269), and not taking and carrying away as in larceny: cp. under Game Act, s. 23, *Molton* v. *Cheesely*, 1 Esp. 123; *Watkins* v. *Price*, 47 L. J. M. C. 1; 37 L. T. N. S. 578.

Presumably a tenant might be prosecuted under this section for this offence, if he take game reserved to the landlord at night, because the Game Act, 1831, appears

primarily to deal with day poachers, and the tenant's offence in sect. 12 would refer to day poaching only. If a tenant shoot hares or rabbits at night he is liable to a penalty under the Ground Game Act, 1880, s. 6, p. 49.

Land, open or enclosed.—It was held in one case that land on the roadside, between the road and the hedge, varying in width, is not open or enclosed land within the meaning of the Night Poaching Act, 1828, but is part of the highway, and therefore within the Night Poaching Act, 1844: *Veysey* v. *Hoskins*, 34 L. J. M. C. 145; but it cannot be said as a matter of course that land at the side of a highway is part of the highway: (*Ibid.*); it is a question of fact.

The Larceny Act, 1861, s. 17, makes it an offence to kill hares or rabbits, in a warren or breeding ground, at night: see p. 130. This section, therefore, will refer to open or enclosed lands, not warrens: *Bevan* v. *Hopkinson*, 40 J. P. 117. It is a question of fact for the justices to determine whether land is a warren of hares and rabbits or not.

2. Entering or being.—This is only one offence: cp. *R.* v. *Mellor*, 2 Dow. P. C. 173; but the proceedings ought to allege that the entry and (sect. 9, *infra*) arming, were at night: *R.* v. *Kendrick*, 7 C. & P. 184; *R.* v. *Wilks*, *Ibid.* 812.

There must be a personal, and not merely a constructive entry on the land: *R.* v. *Pratt*, 24 L. J. M. C. 113; 4 E. & B. 860. Sending a dog from the highway into a field is not entering or being in the field: *R.* v. *Nickless*, 8 C. & P. 757; but where two or more persons are out together poaching with a common purpose, an entry

by one will suffice to convict them all: *R.* v. *Whittaker*, 3 Cox, C. C. 50; *R.* v. *Uezzell*, 20 L. J. M. C. 192; but not so if, where some have entered land, another is poaching independently on other land: *R.* v. *Nickless*, *supra*. Where the case is punishable on summary conviction, the aiders and abettors may be prosecuted under the Summary Jurisdiction Act, 1848, s. 5, which punishes them with the same penalties as the principals.

It is not necessary, in order to prove that the poachers were on the land unlawfully, to negative any permission to them by the owner or the tenant to be there: *R.* v. *Wood*, Dears. & B. 1; 25 L. J. M. C. 96; cp. Game Act, 1831, s. 42.

Any land.—It must be noticed that the Night Poaching Act, 1844, does not supplement the offence of entering and being on any land with intent to poach. It is, therefore, no offence to be on a highway at night with a gun, unless game or rabbits are actually destroyed, for although the highway is private property subject to the public easement for the purposes of prosecuting persons who take game there by day (*R.* v. *Pratt*, 24 L. J. M. C. 113), yet, for the purposes of night poaching, the above section makes a clear distinction between land open and inclosed and the highways, which are specially included within its terms by the Night Poaching Act, 1844, and which have been expressly decided not to be open or inclosed land: *Veysey* v. *Hoskins*, 34 L. J. M. C. 145.

As above stated, however, to stand in a highway with a gun and assist other persons, who have entered a close unlawfully, to poach, is to make oneself a participator in their offence.

It is not an offence under the section to enter land for the purposes of taking game with a dog only, unless the game is actually taken.

Engine or other instrument.—The engine and instrument would be *ejusdem generis* with a gun or net: cp. Game Act, 1831, s. 3; *Allen* v. *Thompson*, L. R. 5 Q. B. 336; 39 L. J. M. C. 102, where a snare was held an engine *ejusdem generis* with a dog, gun, net.

For the purpose of taking.—The jury may infer the purpose from the defendants' acts. If game is actually taken the purpose is clear, but it would be admissible evidence to show that the land where the defendants are found is a preserve, or that the defendants shot there. Where the jury find that the defendants have been out poaching, and intending to take game where they can find it, they can find them guilty of entering land for that purpose in respect to every field through which they pass: *R.* v. *Higgs*, 10 Cox, C. C. 527; *R.* v. *Sutton*, 13 Cox, C. C. 648.

The proceedings need not allege that all or any of the defendants were together in one particular close of land. It is quite sufficient to allege generally, that they were poaching on open or inclosed land, only specifying the land sufficiently to identify it. It is immaterial that one man is in Blackacre and another in Whiteacre, provided they are charged with poaching on Blackacre and Whiteacre; and it is immaterial that Blackacre and Whiteacre are in different occupations, or divided into many closes (*R.* v. *Uezzell*, 2 Den. C. C.

274; 20 L. J. M. C. 192); but where the proceedings allege an entry with intent in a particular close of land, the intent must be proved accordingly: *R.* v. *Gainer*, 7 C. & P. 231; *Fletcher* v. *Calthrop*, 6 Q. B. 880; though amendment of an indictment for the misdemeanour is allowable, if the prisoners have not been misled: *R.* v. *Sutton*, 13 Cox, C. C. 648. As to indictments for night poaching, see Archbold's Criminal Pleadings, 21st ed. p. 1065. With regard to the proceedings before justices, see p. 105.

It is not an offence within sect. 1 to enter land for the purpose of stealing dead game (see p. 77), nor of stealing tame pheasants from under a hen: *R.* v. *Garnham*, 2 F. & F. 347.

Three men armed.—Sect. 9 provides—

That if any persons to the number of three or more together shall by night unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, crossbow, firearms, bludgeon, or any other offensive weapon, each and every of such persons shall be guilty of a misdemeanour, and being convicted thereof before the justices of gaol delivery, or of the court of great sessions of the city or place in which the offence shall be committed, shall be liable, at the discretion of the Court, to be (*transported beyond seas*, *now* 20 *&* 21 *Vict. c.* 3) kept in penal servitude for any term not exceeding fourteen years, or less than (*seven*, *now*) three, or to be imprisoned and kept to hard labour for any term not exceeding (*three*, *now*) two years. (54 *&* 55 *Vict. c.* 69, *s.* 1.)

This case, as above stated, is only triable at the assizes.

For the procedure, limitation of time for proceeding, costs, &c., see p. 107.

The notes to sect. 1, as to the meaning of game, night, open and inclosed land, warrens, all apply to the above section, and the operation of this section is not extended to highways, outlets, gates, &c., by the Night Poaching Act, 1844.

The powers of arrest granted by sect. 2 are applicable to offenders under this section: *R.* v. *Ball*, 1 Moo. C. C. 330.

Armed.—If one is armed to the knowledge of the rest, all are armed for the purposes of the section: *R.* v. *Goodfellow*, 1 Den. C. C. 81; *R.* v. *Smith*, R. & R. 368.

On a repealed statute, it was held that where one had a revolver in his pocket without the knowledge of the rest, they were not armed, but this is a very doubtful defence: *R.* v. *Southern*, R. & R. 444. The words of this statute say nothing of knowledge, but merely require the fact to be proved that one of the poachers is armed. The delinquents need not be caught with the weapons in their hands, if there is evidence that they were armed on the land—*e. g.*, if they have abandoned them for the purposes of escape: *R.* v. *Nash*, R. & R. 386.

Offensive weapon.—Any instrument, though innocent in itself where put to ordinary use, is an offensive weapon if the jury find that the poachers brought it out to use for offensive purposes, though they may

have also intended to use it for other purposes: *R.* v. *Sutton*, 13 Cox, 648. Thus, a walking-stick (*R.* v. *Palmer*, 1 Moo. & R. 70; *R.* v. *Williams*, 14 Cox, 59), or stones (*R.* v. *Grice*, 7 C. & P. 803), may be offensive weapons.

Arrest and assaulting keepers.—Sect. 2 provides—

That where any person shall be found upon any land committing any such offence as is hereinbefore mentioned (*or shall be found unlawfully taking or destroying any game or rabbits on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such land into any such public road, highway, or path* (Night Poaching Act, 1844)), it shall be lawful for the owner or occupier of such land, or for any person having a right or reputed right of free-warren or freechase therein, or for the lord of the manor or reputed manor wherein such land may be situate, and also for any gamekeeper or servant of any of the persons herein mentioned, or any person assisting such gamekeeper or servant (*or for the owner or occupier of any land adjoining either side of that part of such road, highway, or path where the offender shall be, and the gamekeeper or servant of such owner or occupier, and any person assisting such gamekeeper or servant, and for all the persons authorized by sect. 2 of the Night Poaching Act, 1828, as above stated* (Night Poaching Act, 1844)) to seize and apprehend such offender upon such land (*highway, or path, or in the outlets, gates, &c.* (Night Poaching Act, 1844)), or in case of pursuit being made in any other place to which he may have escaped therefrom, and to deliver him as soon as may be into the custody of a police officer, in order to his being conveyed before two justices of the peace; and in case such offender shall assault or offer any violence with any gun, crossbow, firearms, bludgeon, stick, club, or any other offensive weapon whatsoever towards any

person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the Court, to be (*transported beyond seas, now*, 20 & 21 *Vict. c.* 3) kept in penal servitude for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years.

For the procedure, limitation of time for proceeding, costs, &c., see p. 107.

The right of arrest under this section, though confined in the words of the section to offenders under sect. 1, is applicable to offenders under sect. 9, for that section merely imposes a greater penalty on persons who are offenders under sect. 1: *R.* v. *Ball*, 1 Moo. C. C. 330.

It will be understood, also, from the notes under sect. 1, that it is not an offence to enter a highway, outlet, opening, &c., for the purpose of taking game with a gun, and offenders cannot be arrested for this offence unless they are aiding and abetting persons, who have entered land, open or inclosed, for that purpose.

The three offences for which persons may be arrested under this section are, firstly, unlawfully taking or destroying game or rabbits on land; secondly, unlawfully taking or destroying game or rabbits in any highway, outlet, &c.; and thirdly, entering land with a gun, &c., for the purpose of taking game (defined, sect. 13). The powers and limitations of arrest are set out at length under "Gamekeepers," p. 153.

Any person may, however, apprehend and deliver

over to a constable all persons he finds committing an indictable offence between nine p.m. and six a.m. (14 & 15 Vict. c. 19, s. 11.) And this section has been held to apply to persons committing an offence under sect. 9 of the Night Poaching Act, 1828, *supra*: *R.* v. *Sanderson*, 1 F. & F. 598.

The right of arrest under sect. 2 is strictly confined to the persons there mentioned. As to reputed right of free-warren, see *Carnarvon* v. *Villebois*, 13 M. & W. 313; and reputed manor, see p. 145. Neither a sporting tenant, nor a mere licensee, nor their servants, have any right to arrest a poacher under sect. 2, and where such a person attempts to do so reasonable resistance is justified: *R.* v. *Addis*, 6 C. & P. 388; *R.* v. *Wood*, 1 F. & F. 470. So, also, where a servant of a sporting tenant, in struggling to arrest a poacher, discharged his gun and killed the poacher, it was held to be manslaughter: *R.* v. *Wesley*, *ibid.* 528; but, as stated above, these persons may exercise the powers of arrest conferred by 14 & 15 Vict. c. 19, s. 11.

Gamekeepers and other persons authorized by the section may apprehend poachers in the act of offending without notice: *R.* v. *Payne*, 1 Moo. C. C. 378; and without a written authority from their master: *R.* v. *Price*, 7 C. & P. 178. Thus, where an agent appoints a gamekeeper, or where the estate being in the hands of trustees a gamekeeper, who was appointed some years before by their predecessor in title, but continued to be employed by them, and was paid by their agent, and gave authority to a watcher to arrest night poachers, it was held in both cases that the arrest was with sufficient authority: *R.* v. *King*, 48 J. P. 149; *R.* v. *Fielding*, 2 C. & K. 621.

The arrest, however, must be made on the land or highway, &c., where the delinquents are poaching, or at some place where they have been hotly pursued from such land or highway, and keepers are not justified in laying wait for poachers on their return from an expedition: *R.* v. *Meadham*, 2 C. & K. 633; nor may keepers effect an arrest of persons poaching on others' lands, unless they have an authority from the owner of those lands or the gamekeeper of such owner: *R.* v. *Davis*, 7 C. & P. 785; or the poachers are committing an indictable offence in the night. (14 & 15 Vict. c. 19, s. 11.)

If poaching is prevalent, the police may be asked to stop poachers on the highway under the Poaching Prevention Act, 1862, p. 109.

If a keeper, attempting lawfully to apprehend a poacher, be met with violence and strike the poacher in self-defence, and the poacher kill him, it is murder: *R.* v. *Ball*, 1 Moo. C. C. 333. If the keepers are not attempting to arrest the poachers at the time when an attack is made upon them, such an attack is not an assault within sect. 2: *R.* v. *Doddridge*, 8 Cox, C. C. 335.

As to the meaning of offensive weapons, see notes to sect. 9, p. 99.

Seizure of game recently killed.—The Game Act, 1831, s. 36, provides that when any person shall be found by day or night upon any land, or in any of her Majesty's forests, parks, chases, or warrens, in search or pursuit of game, as defined in sect. 2, and also in the Night Poaching Act, 1828, s. 13, and shall then and there have in his possession any game which shall appear

to have been recently killed, it shall be lawful for the person having the right of killing game upon such land by virtue of any reservation or otherwise, as hereinbefore mentioned, or for the occupier of such land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any officer as aforesaid of any such forest, park, chase, or warren, or for any person acting by the order, or in the aid of any of the said several persons, to demand from the person so found such game in his possession, and in case such person shall not immediately deliver up such game, to seize and take the game from him for the use of the person entitled to the game upon such land, forest, park, chase, or warren.

See the notes to this section, p. 89, and generally under the heading "Trespass in pursuit of game," Chap. V.

It will be seen that the seizure is strictly confined to the birds and beasts defined as "game."

A sporting tenant or his servants can seize it, and land includes highway, if the highway is vested in the keeper's master: *R.* v. *Pratt*, 24 L. J. M. C. 113.

There is no power given to any but a constable to search a poacher for game, and no keeper may seize a poacher's gun.

Procedure for Penalties.

The procedure for the prosecution of offenders under the Night Poaching Acts was formerly regulated by sects. 3—8 of the earlier Act. A number of the clauses

of those sections have, however, been repealed, and the provisions of the Summary Jurisdiction Acts substituted.

Summary convictions.—The information for every offence punishable on summary conviction by virtue of these Acts must be laid within six calendar months from the time when the matter of such information arose. (S. J. Act, 1848, s. 11, substituted for N. P. Act, 1828, s. 4, repealed S. J. Act, 1884.)

In computing the six calendar months, the day on which the offence was committed is excluded, and the day of information included, so a complaint made on July 1 of an offence committed on January 1 would be in time: *Radcliffe* v. *Bartholomew*, (1892) 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677. As to limitation of time in indictable offences, see below.

Any person may act as a common informer. As to the method of laying an information, cp. the procedure under the Game Act, p. 255.

Sect. 3 of the Night Poaching Act, 1828, as to the issue of warrants in the first place has been repealed (S. J. Act, 1884), and the procedure in the S. J. Act, 1848, ss. 1, 2, substituted.

As to a claim of right, see p. 260. There is no objection, it appears, when a defendant has appeared to a summons for one offence, to charge him with another verbally, if it be expedient, allowing an adjournment if necessary: see *R.* v. *Hughes*, 4 Q. B. D., pp. 625, 626.

Thus, if a defendant were charged with taking rabbits in a warren, and the magistrates held the land not to be

a warren, the charge might be verbally altered to one of night poaching: *Bevan* v. *Hopkinson*, 34 L. T. 142.

The form of conviction in the Summary Jurisdiction Rules, 1886, is now substituted for that in the Night Poaching Act, s. 5, repealed. (S. J. Act, 1884.) As to costs in summary convictions, see S. J. Act, 1848, ss. 18, 23. The penalty is paid to the county treasurer. (*Ibid.* s. 31.)

Any person may appeal to quarter sessions from a summary conviction. (N. P. Act, 1828, s. 6.) The remainder of the section is repealed. (S. J. Act, 1884.) The method of appeal will be found in the S. J. Act, 1879, s. 31. (S. J. Act, 1884, s. 6.) Notice of appeal must be served within seven days of the decision of the justices: see *R.* v. *Glamorganshire Justices*, 22 Q. B. D. 628.

Convictions are not to be quashed for want of form, and no certiorari is allowed: see, however, p. 264, and the cases there cited. (Sect. 7.) The remainder of this section as to warrants of commitment is repealed (S. J. Act, 1884): see S. J. Act, 1879, s. 39, sub-s. 3.

All convictions under this Act for a first or second offence are to be returned to quarter sessions by the convicting justices—the clerk of the peace is to keep a memorandum of such conviction in a register.

The record or a copy thereof is to be evidence in any subsequent prosecution for a second or third offence, and the clerk of the peace is to certify as to whether the record shows a conviction for a first or second offence. (Sect. 8.) Previous convictions can be proved in the manner indicated, or under 34 & 35 Vict. c. 112, s. 18, or 14 & 15 Vict. c. 99, s. 14. There must, of course, be evidence produced of the identity of the offender.

Indictable Offences.—For the general procedure before justices in indictable offences, see Oke's Magisterial Synopsis, 14th ed., p. 700; 11 & 12 Vict. c. 42.

The prosecution for every offence under the Night Poaching Acts, punishable on indictment, or otherwise than on summary conviction, shall be commenced within twelve calendar months after the commission of such offence (N. P. Act, 1828, s. 4); "within" means, as stated, p. 105. The prosecution has been held to have commenced, where the warrant of commitment (*R.* v. *Austin*, 1 C. & K. 621), and the information and warrants to apprehend (*R.* v. *Brooks*, 2 Cox, C. C. 436), were proved to have been issued within the year, but in the absence of the information the warrant of apprehension is not legal evidence of proceedings having commenced for this particular offence: *R* v. *Parker*, 33 L. J. M. C. 135; 9 Cox, C. C. 475; *R.* v. *Casbolt*, 21 L. T. 263; *R.* v. *Hull*, 2 F. & F. 16.

Persons committed for trial for misdemeanours under the Night Poaching Acts are entitled to bail if they can find sureties: 11 & 12 Vict. c. 42, s. 23. As to the form of the indictment alleging previous convictions, and generally, see Archbold's Criminal Pleadings, pp. 1065, 786.

Evidence must be given of previous convictions and of the identity of the prisoner (see *supra*, p. 106), in prosecutions for misdemeanour under sect. 1; but in *R.* v. *Woodfield*, 16 Cox, C. C. 314, Hawkins, J., refused to receive it until the jury had found a verdict on the third charge. Misdemeanours under sect. 1 are triable at quarter sessions, but under sect. 9 only at the assizes.

No costs of the prosecutor are allowed at quarter sessions or assizes, even though on the facts a prisoner

might have been indicted for an assault with intent to inflict grievous bodily harm on the keeper.

Where proceedings are taken against any person for any act done in intended execution of the Night Poaching Acts, the action must be commenced within six months. (Public Authorities Protection Act, 1893, see p. 270.)

CHAPTER VII.

THE POACHING PREVENTION ACT, 1862.

THIS Act provides as follows—

1. The word "game" in this Act shall for all the purposes of this Act be deemed to include any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game; and the words "justice" and "justices" in this Act shall, unless otherwise provided for, mean respectively a justice and justices of the peace respectively of or for the county, riding, division, liberty, city, borough, or place in which any game, gun, part of gun, net, snare, or engine after mentioned shall be found.

2. It shall be lawful for any constable or peace officer in any county, borough, or place in Great Britain and Ireland, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person, and should there be found any game or any such article or thing as aforesaid upon such person, cart or other conveyance, to seize and

detain such game, article, or thing; and such constable or peace officer shall in such case apply to some justice of the peace for a summons citing such person to appear before two justices of the peace assembled in petty sessions, as provided in the (eighteenth and nineteenth of her present Majesty, chapter one hundred and twenty-six, section nine, repealed Summary Jurisdiction Act, 1879, s. 56, now) Summary Jurisdiction Act, 1879, s. 20, which provides that the petty sessions shall be an open Court. See also, 52 & 53 Vict. c. 63, s. 13 (12).

The above section of the Act then proceeds as follows—

And if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding five pounds, and shall forfeit such game, guns, parts of guns, nets, and engines, and the justices shall direct the same to be sold or destroyed, and the proceeds of such sale, with the amount of the penalty, to be paid to the treasurer of the county or borough where the conviction takes place; and no person who, by direction of a justice in writing, shall sell any game so seized shall be liable to any penalty for such sale; and if no conviction takes place, the game or any such article or thing as aforesaid, or the value thereof, shall be restored to the person from whom it had been seized.

For the recovery of the penalty, see p. 122.

Constable.—This is the only game statute which directly invokes the aid of the police for the protection of game. A constable is authorized under sects. 9, 10, of the Gun Licence Act, 1870, to demand gun licences, and it is possible that he may be asked to assist keepers to

effect an arrest under the Game Act, 1831, s. 31 (p. 87), or the Night Poaching Acts, 1828, 1844, see sect. 2 of the former (p. 100); but the public have always viewed with jealousy the employment of constables to assist in the preservation of game. In consequence, however, of the breaches of the peace, and murderous assaults which arose, and still arise from the necessity of arresting poachers under the Game Act, and Night Poaching Acts, in very many cases in the darkness, and in all cases in the act of poaching, this statute was passed to assist keepers in this respect, that whether from information obtained from them or otherwise, a constable on duty in public places might be enabled to stop and search persons on their return from what he might suspect was a poaching expedition, and if game was found on them, to lay the same onus on such persons of accounting for the possession of it, as the law lays upon the possessors of stolen property: see *per* Erle, J., in *Brown* v. *Turner*, 32 L. J. M. C., 106.

Highway, street, or public place.—Public place means *ejusdem generis* with highway or street. A railway carriage would not be *ejusdem generis: Langrishe* v. *Archer*, 10 Q. B. D. 45, 47. A hackney carriage is not plying for hire in a street or place within the meaning of 1 & 2 Will. 4, c. 22, s. 35, when it is standing in a station yard: *Case* v. *Storey*, L. R. 4 Ex. 319; but, taking this statute as a whole, the argument on the meaning of the above words that would seem to suggest itself is, that public place means those places in the nature of a highway which a constable usually patrols, and a railway station platform, for example, could hardly be said to come within the terms of the section, and a public-

house almost certainly would not: see *Clarke* v. *Crowder*, L. R. 4 C. P. 638; 43 J. P. 666; 38 L. J. M. C. 118.

Search.—The persons whom the constable may search are those that he suspects of returning from a poaching expedition, and those whom he suspects of aiding and abetting other persons who he suspects have been on a poaching expedition. He cannot stop and search persons he suspects of starting on an expedition.

If the constable actually sees game or guns, nets, &c. on the person, game, guns, and nets, &c., are found upon him, and it is not necessary that he should further search such person in order to lay a foundation for further proceedings under the section: *Hall* v. *Knox*, 33 L. J. M. C. 1.

The search, or where there is no necessity for a search, the finding of some one or more of the above articles, must take place in the highway, street, or public place in order to a conviction under the section: *Lloyd* v. *Lloyd*, 14 Q. B. D. 725, 728; *Clarke* v. *Crowder*, L. R. 4 C. P. 638. See "Seizure," *infra*.

Good cause to suspect.—The constable's suspicion may arise from information or observation, but he must have a good cause; if he search persons whom he has no reasonable grounds for suspecting, reasonable resistance on their part will be justifiable: *R.* v. *Spencer*, 3 F. & F. 857.

The suspicion need not arise from his having actually seen the person coming from land, for the justices are allowed to infer from circumstantial evidence that such person had been unlawfully on land, without proof of an eye-witness, or other evidence as to the particular

land (see below: *Evans* v. *Botterill*, 33 L. J. M. C. 50; *Brown* v. *Turner*, 32 L. J. M. C. 106; 7 L. T. 681); and the constable may well have his suspicions on the same. *A fortiori*, if he actually see persons poaching, he may stop them when they come upon the highway: *Hall* v. *Robinson*, 53 J. P. 310.

Engines.—These would mean in the nature of nets, &c., *e.g.*, snares (cp. *Allen* v. *Thompson*, L. R. 5 Q. B. 336; 39 L. J. M. C. 102); but ferrets would not probably be engines.

Game.—This is defined above, sect. 1. It will mean wild game when alive. As to larceny of tame game, see p. 12; and cp. *R.* v. *Garnham*, 2 F. & F. 347.

The above definition of game is more extensive than that of the Game Act, 1831, s. 2, but by sect. 24 of that Act penalties are imposed on persons who, not having the right of killing game on land, take out of the nest on such land the eggs of game birds, as defined by that statute.

Seize and detain.—There must be a seizure of game, gun, nets, or engines to give the constable a right to apply for a summons, and the constable who effects a seizure can alone apply for a summons: *per* Bovill, C.J., *Clarke* v. *Crowder*, L. R. 4 C. P., at p. 642. As stated above, there is no question that, in order to a conviction, the search or finding must have taken place in the highway, street, or public place (p. 112); but there has been some difference of opinion as to whether the seizure must necessarily also take place in these places. In *Clarke* v. *Crowder* (L. R. 4 C. P. 638; 38 L. J. M. C. 118),

the defendants were followed to a house by a police constable, and nets and rabbits were found in the house. They had been viewed in the distance on the highway by the constable, but no search took place there, nor was any game found upon them within the meaning of *Hall* v. *Knox*, *supra*, in the highway: the Court held that under these circumstances it was clear that the justices had no grounds for convicting the defendants, and Bovill, C. J., and Brett, J., went further, and expressed it as their opinion that the seizure of game, guns, &c. must take place on the highway, and that if, though the poacher be seen with the articles on him, he escaped with them, the magistrate's jurisdiction would not arise. In *Turner* v. *Morgan* (44 L. J. M. C. 161; L. R. 10 C. P. 587), a constable attempted to stop a cart, which the defendant was driving, but he escaped. A few minutes afterwards certain rabbits were found by the constable wrapped in a rug in the cart of another person within a few feet from, but not in, the highway; it was proved that the defendant had just before removed them from his own cart, and the constable had also seen the rug enclosing a bundle in the defendant's cart, at the time when he attempted to stop it: the Court unanimously (Brett, Denman, and Lindley, JJ.) held that finding, seizure, and detention must all take place on the highway, or in a street or public place, and that the justices had therefore in this case no jurisdiction.

In *Lloyd* v. *Lloyd* (14 Q. B. D. 725; 53 L. T. 536; 49 J. P. 630), a constable met the defendant coming along the street with two other men. The defendant, who had rabbits slung over his shoulder, on seeing the constable ran from the highway across two fields; the

constable overtook him, and seized the rabbits in a field about two hundred yards off the highway, having during the pursuit never lost sight of the defendant. The justices convicted, and were upheld by the Court, and Mathew, J., said: "All that is necessary under this Act is that the suspected person should be searched on the highway, and that having been done, that the game, &c. found should be seized and detained by the constable. It is indicated that search, seizure, and detainer should all take place then and there; but to suppose that all must of necessity take place in the highway would lead to this result, that the person searched and found to have game in his possession might get rid of all liability by throwing the game over the fence before the constable was able to seize it. . . . . In *Clarke* v. *Crowder* there was no search at all. In *Turner* v. *Morgan* nothing was seen but a bulky parcel, and at a considerable interval afterwards the constable was able to trace that parcel into a place that was not a highway, street, or public place. . . . . We are not concluded by authority, though some of the learned judges, who decided the former cases, were of opinion that the game or article must be seized in the highway." Smith, J., concurred, but said, p. 729: "I wish to say that I do not think that the justices would have jurisdiction to convict if, after a search in the highway, the constable let the suspected person go away, and then afterwards went after him and seized and detained the game."

The result of these decisions cannot be considered satisfactory. In *Turner* v. *Morgan* there was, in fact, a finding in the highway of game in the appellant's cart, for the Court so held (see Brett, J., p. 593), and

therefore the grounds of differentiation between that case and *Lloyd* v. *Lloyd*, do not exist. It is practically an open question still what the true construction of the section is, but common sense is strongly in favour of the later decision. It will be seen, from the remarks of Smith, J., that he considered that, even if an actual seizure on the highway was unnecessary, it must take place at any rate in hot pursuit after the search or finding, so that the finding and seizure should be all part of the same transaction.

Such constable shall apply.—It is not left to his option to take out a summons, but he is bound to do so, *per* Bovill, C. J.: *Clarke* v. *Crowder*, *supra*. He is to apply to a justice having jurisdiction in the place. (Sect. 1.)

There is no power in the constable to arrest a man, on whom he has found game or one of the articles mentioned. He can only detain him while he searches him: *R.* v. *Spencer*, 3 F. & F. 854. Reasonable resistance to unlawful apprehension of persons suspected of coming from land, under this section is justifiable, and if one of a party thus resisting apprehension use unreasonable violence, the others are not necessarily parties to such act. (*Ibid.*)

If the constable finds nothing upon the suspected poacher, or in his cart, he will release him. If he finds game or one of the articles mentioned on him, he can do nothing except apply for a summons, though the man be unknown to him.

In order to apply for a summons, the constable will swear an information charging the defendant on suspicion of having come from land, where he had been

unlawfully in pursuit of game, or of being accessory to other persons so doing: *Lundy* v. *Botham*, 41 J. P. 774. And this is the real offence under the section.

If necessary, a warrant can be issued in the first place, but this should not be done if a summons will be equally effectual: *O'Brien* v. *Brabner*, 49 J. P. 227. (See p. 257.)

If such person.—In order to convict, the justices must satisfy themselves of one of the following points:—

1. Whether, after search and seizure as above, where game has been found on the defendant, the defendant obtained it by unlawfully going on land.

2. Whether he obtained it as accessory to other one or more persons who unlawfully had been on land.

3. Whether, where guns and the other articles mentioned are found on the defendant, he has used them or any of them for unlawfully killing or taking game.

4. Whether he was accessory to persons or a person, who had used them for unlawfully killing or taking game.

Unlawfully going on land.—It is not necessary to prove that the defendant, or his principals, have been on any particular land. Where a defendant is found with game in his possession, and facts are proved, which make out a *primâ facie* case, this statute throws upon the defendant the onus of explaining where he got the game, and if no sufficient explanation is forthcoming, the justices may reasonably draw the conclusion that the defendant has been poaching, without direct evidence as to the specific land on which he has poached. They may also convict him on direct evidence that he has

been poaching on other land than the constable suspected him of doing: *Brown* v. *Turner*, 32 L. J. M. C. 106; 7 L. T. 681; *Evans* v. *Botterill*, 33 L. J. M. C. 50; 8 L. T. 272; *Fuller* v. *Newland*, 27 J. P. 406.

Where the defendant gives a possible mode of his becoming possessed of game, and there is nothing unusual in his possession of it, the Court has approved of the justices' refusal to convict. It stands to reason that on a pure question of fact no general rule can be laid down as to what is or what is not sufficient evidence upon which to convict, but there must be evidence for a jury, if the trial had been before a jury: *per* Williams, J., *Brown* v. *Turner*, *supra*.

Used such article.—If no game is found on the defendant, but a gun or one of the articles mentioned, it is not necessary to do more than prove a *primâ facie* case of user of the article, much less to prove that it has been successfully used. Thus, where a dog was heard yelping, as if in chase, and shortly after the two defendants were found on the highway at 9.30 p.m. on a damp night with a net, which was rather wet, and a lurcher dog, but nothing else was found on them, a conviction by the justices was upheld: *Jenkin* v. *King*, L. R. 7 Q. B. 478; 41 L. J. M. C. 145. The onus lies on the defendant of showing that the gun or article had been used lawfully, or not used at all, or was incapable of being used.

Accessory.—The words of the section seem to make it clear that, in order to set in motion the procedure of this statute against an accessory, the accessory must have been searched on the highway, or game or gun,

&c. found on him in the highway, and seized there, in the same manner as if he were to be charged with being a principal.

In *Brown* v. *Turner* (32 L. J. M. C. 106; 27 J. P. 103), where four defendants were found on the highway, but the rest running away, only one was searched, the Court upheld the conviction of two of the others on distinct evidence that they had been poaching recently, but evidence obtained long afterwards, and not on the highway. The information in this case charged all the defendants with being principals, and also accessories one to another. The report does not mention if the two in question were convicted of being principals or accessories, and the case being an early one on the statute, the attention of the Court was not directed to what is now the law, viz., that to convict even principals search, at any rate, must have taken place in the highway. Under these circumstances, it is difficult to say that the case is an authority for the proposition that where a principal or one of their number only has been searched in a highway, the remainder of the accessories can nevertheless be proceeded against under the section on evidence subsequently obtained, and this in face of the plain words of the section, which apply the search and seizure as much, apparently, to the accessories as the principals. Accessories, however, who avoid search will not necessarily escape punishment; for if one of the party be searched on the highway, and be subsequently convicted of having been on land or used a gun for unlawfully killing game, the rest of the party, although no proceedings can be taken against them under the section, can be prosecuted under the Summary Jurisdiction Act, 1848, s. 5, specially applied to

this Act (sect. 4, *infra*), which provides that the same penalty as the law imposes on the principal can be also imposed on any person who aids, abets, counsels, or procures the commission of any offence punishable on summary conviction. Some evidence must, of course, be produced against such persons, but not necessarily obtained on the highway.

It is also unnecessary to state that if one of the party is arrested on the highway under the Poaching Prevention Act, there is nothing to prevent the rest from being prosecuted for particular acts of day or night poaching on particular land, if there is evidence. It is doubtful however, if one of a party has been searched and convicted under this Act of being an accessory only, whether the rest of the party could be charged under the Summary Jurisdiction Act, 1848, with aiding and abetting the accessory.

The following are instances of the search of accessories in a highway in which the justices refused to convict.

A carrier is found at three a.m., his usual time on the road, with rabbits apparently killed on the previous day; he denies the possession till the cart is searched, and then said that he was taking them to certain persons named, who denied all knowledge of him or the rabbits. Held, no evidence that defendant had been on land for the purpose of taking the rabbits or was accessory to persons who had: *Shuttleworth* v. *Grange*, 31 J. P. 280; but, *per* Willes, J., if three a.m. had not been the defendant's usual hour on the road, there would have been ample evidence against him, see also *Jones* v. *Dicker*, 22 L. T. 95; 34 J. P. 677, where the facts were much the same. The refusal of the justices to convict

was also upheld in the following case. Where the cart of a carrier, who was also a general game dealer, is stopped at seven a.m., all the rabbits found in it are accounted for, except four; the defendant, on being told by the constable that if he bought rabbits from poachers he must expect to be summoned, said "I won't have any more of them." Held, there was no evidence that defendant was accessory to the taking of the rabbits by poachers: *Lawley* v. *Merricks*, 51 J. P. 502.

On the other hand, where a greengrocer and a licensed dealer were stopped, and rabbits found in their carts, and the magistrates drew conclusions against them, the Court refused to interfere: *Ex parte Whiteley*, 39 J. P. 70; *R.* v. *Cheshire JJ.*, 40 J. P. 148.

To be sold.—The justices can probably order the game to be sold before conviction, provided it has been produced in evidence, because it will be seen from the words of the section that if no conviction takes place, they are to restore the "game, article, or thing, or the value thereof" to the defendant; and considering the matter from all points of view, it is difficult to see why the county should lose the value of the game by its being allowed to rot.

Penalty for such sale.—(See p. 221.) The justices must sell to a licensed dealer, or the party buying from them would be liable to a penalty, though they are not. (See p. 225.)

Recovery of Penalties.

Sect. 3 provides—

Any penalty under this Act shall be recovered and enforced in England in the same manner as penalties under the Act first and second William the Fourth, chapter thirty-two.

The effect of this section is to apply the procedure provisions of the Game Act, 1831, to this Act: those that remain unrepealed are treated of at p. 255, where the necessary steps to recover penalties under that Act, and the Summary Jurisdiction Acts, are detailed at length.

By sect. 38 of the Game Act, 1831, where the fine does not amount to 5*l.*, exclusive of costs, in default of payment imprisonment may be imposed for any term not exceeding two months with hard labour. Where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38 repealed in part by the S. J. Act, 1884.)

Sect. 4 provides as follows—

The powers and provisions of the Act of the eleventh and twelfth years of her present Majesty, chapter forty-three, shall extend and apply to this Act, and to all proceedings, matters, and things to be taken, had and done, and to all persons to be proceeded against or taking proceedings under this Act.

The application of the Summary Jurisdiction Act, 1848, is modified to a certain extent by the later Acts of 1879, 1884. (See the chapter on "Procedure," p. 255.)

Sect. 5 provides as follows—

No conviction or order made under this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior Courts of Record.

The remainder of this section is repealed.

As to the effect of the provision, cp. Game Act, 1831, s. 45, and see p. 264.

Sect. 6 provides as follows—

Any person who shall think himself aggrieved by any such summary conviction may appeal to the next Court of General or Quarter Sessions.

The remainder of the section is repealed.

The procedure on appeal is now regulated by the Summary Jurisdiction Act, 1879, s. 31.

CHAPTER VIII.

KILLING GAME WITHOUT A LICENCE.

The Game Act, 1831, s. 6, provides that every person who shall have obtained an annual game certificate (now a licence to kill game: Game Licence Act, 1860, s. 6) shall be authorized to kill and take game, subject always to an action, or to such other proceedings as are hereinafter mentioned (*i.e.*, sect. 30 *et sqq.*), for any trespass by him committed in search or pursuit of game; but it must be further understood that a licence to kill game does not authorize any person to use firearms at night, as prohibited by the Hares Act, 1848, s. 5, or the Ground Game Act, 1880, s. 6, or to use poison (Game Act, 1831, s. 3), or kill game in close times. (*Ibid.*)

The provisions as to licences to kill game, the mode of obtaining them, and the regulations as to their continuance and expiration, are fully dealt with in Chapter XV.

The Game Licence Act, 1860, s. 4, as will be seen in that chapter, imposes an excise penalty upon all persons who kill game, or woodcocks, snipes, quails, landrails, conies, or deer; and by the Game Act, 1831, s. 23 (an almost identical section), a cumulative penalty is imposed upon persons killing game as defined by that Act

(sect. 2), but omitting reference to the other animals mentioned in the Game Licence Act. The two Acts are, as far as regards game, entirely independent of one another. The provisions of the Excise Act are preserved by the effect of sect. 6 of that Act and sect. 5 of the Game Act, and the provisions of sect. 23 of the Game Act are therein expressed to be cumulative on the excise penalty imposed by the Act of 1860.

Game means hares, pheasants, partridges, grouse, heath or moorgame, blackgame, and bustards. (Sect. 2.)

Sect. 23 provides—

That if any person shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of searching for or killing or taking game, such person not being authorized so to do for want of a game certificate, he shall, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction: provided always, that no person so convicted shall by reason thereof be exempted from any penalty or liability under any statute or statutes relating to game certificates, but that the penalty imposed by this Act shall be deemed to be a cumulative penalty.

For the recovery of the penalty, see p. 255.

In default of payment of the fine, imprisonment with hard labour may be imposed for any term not exceeding two months, where the fine exclusive of costs does not amount to 5*l.* (sect. 38); where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38 as in part repealed by Summary Jurisdiction Act, 1884). The penalty under this section is not only cumulative on that under the Game Licence Act, but

also under sect. 3 of the Game Act. Thus a person using a trap for taking game in close time, if he have no licence, is liable to penalties under both sections: *Saunders* v. *Baldy*, L. R. 1 Q. B. 87; 13 L. T. N. S. 322.

Kill or take or use any dog, &c.—It must be understood that two offences are created by the section, viz., either (i) killing or taking game, or (ii) using a dog, gun, &c. for the purpose. It does not seem, however, that a person who is found killing game with a gun could be convicted of both offences on the same occasion; to use a gun and also a dog would not be two separate offences, and to use one or other of them several times in one day, as also to kill several head of game in one day, would be only one offence: *R.* v. *Lovet*, 7 T. R. 152; *R.* v. *Matthews*, 10 Mod. 26. And it is doubtful if it would be two offences to use a dog, &c. in the morning, and to kill game by some other means than a dog, gun, net, engine, or instrument in the afternoon. (*Ibid.*)

Take means "catch," *primâ facie*: *R.* v. *Glover*, R. & R. 269; and though, if the game be accidentally caught in a trap, or by a dog being used for a lawful purpose, such catching would not be an offence under the section, yet if the person who has so caught the bird or beast of game takes it out of the trap for the purposes of keeping it, and not to revive it and let it go, this is a taking within the section: *Watkins* v. *Price*, 47 L. J. M. C. 1; 37 L. T. 578; *Molton* v. *Cheeseley*, 1 Esp. 123.

Take and kill are only one offence, though a person may commit an offence by taking without killing. Cp. the Game Licence Act, 1860, s. 4: *Laxton* v. *Jefferies*,

58 J. P. 318. Whether the defendant was using a dog, gun, &c., is a question of fact for the justices. Under former game statutes, to be found walking about where game is with a dog or gun was held to be evidence of using them for the purpose of searching for game: *R.* v. *Davies*, 6 T. R. 177; *Hebden* v. *Henty*, 1 Ch. 607.

Engine or instrument means *ejusdem generis* with gun or net, *e.g.*, a snare: *Allen* v. *Thompson*, L. R. 5 Q. B. 336; 39 L. J. M. C. 102. It would be difficult to take "game" with a ferret.

A discussion arose under an earlier game statute (5 Anne, c. 14) whether, if two persons join in using a dog, this was but one offence; but there is no question now, that if two persons join in killing game, or using a dog, gun, net, &c. under this section, each is liable on a joint information to pay the penalty: *R.* v. *Littlechild*, L. R. 6 Q. B. 293; 40 L. J. M. C. 137. See further on this subject, pp. 256, 263.

Where a lease contained a condition of re-entry in case the tenant or his assigns were convicted of any offence against the game laws, Kelly, C.B., expressed an opinion that a conviction under the above section was not such an offence: *Stevens* v. *Copp*, L. R. 4 Ex. 20; 38 L. J. Ex. 31.

Persons killing hares under the authority of the Hares Act, 1848, and the Ground Game Act, 1880, are exempt from the necessity of taking out a licence to kill game.

A defendant charged under this section is not a competent witness: *Cattell* v. *Ireson*, 27 L. J. M. C. 167. (See p. 259.)

CHAPTER IX.

TAKING OR DESTROYING THE EGGS OF GAME.

The Game Act, 1831, s. 24, provides as follows :—

That if any person not having the right of killing the game upon any land, nor having permission from the person having such right, shall wilfully take out of the nest or destroy in the nest upon such land the eggs of any bird of game, or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his house, shop, possession, or control any such eggs so taken, every such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every egg so taken or destroyed, or so found in his house, shop, possession, or control, such sum of money, not exceeding five shillings, as to the said justices shall seem meet, together with the costs of the conviction.

In default of payment, imprisonment with hard labour may be imposed for any term not exceeding two months, where the fine exclusive of costs does not amount to five pounds; where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly repealed by Summary Jurisdiction Act, 1884.)

For the recovery of the penalty, see p. 255.

As to the person having the right to kill game, see "Landlord and Tenant," p. 25; "Free-warren," p. 17.

The above enactment refers to the eggs of the birds mentioned when wild and unreclaimed. To take the eggs of tame birds in a mew or under a hen is larceny. (See p. 12.)

As to swans, see p. 251. Presumably, swans' eggs are not the subject of larceny, as the above penalty, which is a lesser one, is provided for taking them.

Wild duck, teal, and widgeon are protected in close time by the Wild Birds Protection Act, 1880, p. 233.

CHAPTER X.

TAKING HARES AND RABBITS IN WARRENS.

The Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 17, provides that—

Whosoever shall unlawfully and wilfully between the expiration of the first hour after sunset, and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be inclosed or not, shall be guilty of a misdemeanour. And whosoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset, take or kill any hare or rabbit in such warren or ground, or shall *at any time* set or use therein any snare or engine for the taking of hares or rabbits, shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the justice shall seem meet.

And in default, imprisonment may be imposed, with or without hard labour (s. 107), according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 107, as repealed in part by the Summary Jurisdiction Act, 1884.)

Provided that nothing in this section contained shall affect any person taking or killing in the daytime any

rabbits on any sea-bank, or river-bank in the county of Lincoln so far as the tide shall extend, or within one furlong of such bank.

For the recovery of the penalty, procedure, &c., see p. 265.

Warrens of hares and rabbits must not be confused with the right of free-warren, as to which see p. 17.

Any person may allow hares and rabbits to form a breeding-ground on his own land, and such a warren is not a nuisance, though he must not overstock his land with game to the detriment of his neighbours: *Bowlston* v. *Hardy*, Cro. Eliz. 547; *Hilton* v. *Green*, 2 F. & F. 821; *Farrer* v. *Nelson*, 15 Q. B. D. 298. (See p. 52.)

The section does not interfere with sect. 1 of the Night Poaching Act, 1828, which relates to land open and inclosed, which is not a warren: *Bevan* v. *Hopkinson*, 34 L. T. 142. It is a question of fact for the justices to determine whether the ground is a warren or not: *Bevan* v. *Hopkinson*, *supra*; and if it is not, the offender may be possibly convicted of day or night poaching. A rickyard, where the prosecutor kept a few rabbits, is not a warren or breeding-ground: *R.* v. *Garratt*, 6 C. & P. 369.

Unlawfully "taking" means "catching": cp. *R.* v. *Glover*, R. & R. 269. The section would not apply to rabbits tamed and reclaimed in some inclosure. To "take and carry them away" would be larceny, see p. 13.

If a rabbit warren is let to a tenant for agricultural purposes, he will acquire concurrent rights to the hares and rabbits under the Ground Game Act, 1880, unless

such tenancy is merely agistment for nine months in the year or less. (Ground Game Act, 1880, s. 1 (2).)

Commoners have no right to kill rabbits on the common, see p. 15: *Cooper* v. *Marshall*, 1 Burr. 259. A claim of right, which is *bonâ fide*, would oust the jurisdiction of the magistrates: see p. 260; and for an instance, see *Newcombe* v. *Fewins*, 41 J. P. 581.

At any time set or use a snare or engine, viz., whether by day or by night. Engine means *ejusdem generis* with a snare. Gun would not be included, cp. sect. 16 of the Act, where gun is mentioned in addition to snare and engine, and see *Daddle* v. *Hickton*, 17 L. T. N. S. 549.

If a person is found in pursuit of game over land kept as a warren, but is not an offender within the terms of sect. 17, there is no reason why he should not be prosecuted under the Game Act, 1831, s. 30, or any other Act relating to game trespass; but if a person be summarily convicted of taking rabbits in a warren, he is released from all further or other proceedings in the same cause. (Larceny Act, s. 109.)

Sea-banks in Lincoln.—The effect of this proviso seems to be that persons unlawfully taking rabbits in the day time on the banks, or within one furlong, as stated in the section, are exempted from the penalties imposed by the section, but not from those imposed by the Game Acts for trespass in the day time.

Apprehension of offenders.—The Larceny Act, 1861, s. 103, provides that any person found committing any offence punishable either upon indictment or upon

summary conviction by virtue of this Act, may be immediately apprehended without a warrant by any person, and forthwith taken with such property before some neighbouring justice, to be dealt with according to law.

"Found committing" means in the act of committing: *Downing* v. *Capel*, L. R. 2 C. P. 461; *Griffith* v. *Taylor*, 25 W. R. 196; 2 C. P. D. 194.

CHAPTER XI.

FIRING CROPS, HEATH, FURZE AND WOOD.

The Malicious Damage Act (24 & 25 Vict. c. 97), s. 16, provides that whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain, or pulse or of any cultivated vegetable produce whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement (s. 75), and if a male under the age of sixteen years with or without whipping.

The procedure before justices will be found in 11 & 12 Vict. c. 42. The indictment under this section is only triable at the assizes.

As to arrest of offenders, see below, sect. 61.

Sect. 17 makes it a felony to unlawfully and maliciously set fire to stacks of corn, grain, pulse, tares, hay, straw, haulm, stubble or any cultivated vegetable produce, or furze, gorse, heath, fern, turf, peat, coals, char-

coal, wood or bark, or to any steer of wood or bark. And sect. 18 makes it a felony maliciously and unlawfully by any overt act to attempt to set fire to any of the matters and things mentioned in sects. 16 & 17.

The notes to sect. 16 apply to sects. 17 and 18.

Unlawfully and maliciously.—A person who sets fire to furze under a *bonâ fide* belief that he has a right to do it is not an offender under the section: *R.* v. *Twose*, 14 Cox, 327. A tenant or owner of lands, who lights a fire on his own lands *bonâ fide* for the purposes of husbandry, is clearly not an offender under the above sections. As has been stated in a previous chapter (p. 63), grants and reservations of sporting rights over land only entitle the grantee to exercise such rights as the land may happen to be at the time. The grantee must permit the landlord to manage his estate in the ordinary way, and tenants to cultivate their land in the ordinary way: *Pattison* v. *Gilford*, L. R. 18 Eq. 259; 43 L. J. Ch. 524; *Gearns* v. *Baker*, L. R. 10 Ch. 355; 44 L. J. Ch. 334; *Jeffryes* v. *Evans*, 34 L. J. C. P. 261.

A person who rents sporting rights from another, should stipulate that gorse or heath burning should only take place between certain dates, if he fears that the game will suffer injury. In Scotland it is an offence for any person to set fire to his heath between April 11 and November 1 (13 Geo. 3, c. 54); but this is not so in England.

Any person may *bonâ fide* light a fire on his land for the purposes of husbandry at any time; but, as between himself and his neighbours, if he do so negligently, and damage is caused to their land or crops, the person lighting the fire, having brought on his land a dangerous

matter, will, on proof of such negligence, be responsible for the damage so caused: *Tuberril* v. *Stamp*, 1 Sal. 13; *Furlong* v. *Carroll* (1882), 7 Ont. App. 145 (Canadian); *Mackintosh* v. *Mackintosh*, 2 Macph. 1357 (Scotch).

It will be a question for the jury whether there has been negligence or not.

A fire which breaks out by chance, and has not been lighted either intentionally, or through negligence, or want of reasonable care, cannot afford a neighbour a ground of action for damage. (14 Geo. 3, c. 78, s. 86; *Filliter* v. *Phippard*, 11 Q. B. 347.)

Arrest.—Any person found committing any offence against the Malicious Damage Act, 1861, whether the same be punishable on indictment or upon summary conviction, may be immediately apprehended without a warrant by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law. (Sect. 61.)

As to protection against action for acts done in the intended execution of the above section, see the Public Authorities Protection Act, 1893 (p. 270), which repeals sect. 71 of the above Act.

CHAPTER XII.

POISONS.

Before considering the special enactments with regard to the particular use of poisons, when obtained, it will be convenient to consider the restrictions, which are laid on the sale of poisons.

By virtue of the Arsenic Act, 1851 (14 & 15 Vict. c. 13), and the Pharmacy Act, 1868, which contains an additional series of provisions with regard to poisons, and does not repeal the former Act (sect. 17), no person but a chemist (sect. 15) may sell by retail arsenic, prussic acid, strychnine, or any vegetable poison, or any of the other poisons mentioned in the schedule to the Act (A), except such person is known to the seller, or is introduced by some person known to the seller, and one or both of these persons signs his name in a register, which will also contain the address of the purchaser, the amount sold, and the purpose for which it is sold, with the date of sale. (Sect. 17.)

By the Arsenic Act, s. 3, no person may sell arsenic except when mixed with soot or indigo; but if the arsenic is stated by the purchaser to be required, not for use in agriculture, but for some other purpose, for which such admixture would, according to the representation of the purchaser, render it unfit, such arsenic may be

sold without such admixture in a quantity of not less than ten pounds at any one time.

There are certain other regulations also provided in the Pharmacy Act as to the duties of chemists in the matter of selling poisons, but, for the purposes of this work, they are not of consequence.

Laying poison to kill game.—The Game Act, 1831, s. 3, provides that—

If any person, with intent to destroy or injure any game shall at any time put, or cause to be put, any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway, every such person shall, on conviction thereof before two justices of the peace, forfeit and pay such sum of money, not exceeding 10*l.* as to the said justices shall seem meet, together with the costs of the conviction.

In default, imprisonment may be imposed for any term not exceeding two calendar months, with or without hard labour, where the penalty, exclusive of costs, does not amount to 5*l.*; where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly amended by the S. J. Act, 1884.)

This section only applies to game as defined by sect. 2.

The intent to kill or injure game must be proved as alleged, and as this is not likely in most cases to be a charge easily proved, it will probably be found that the Poisoned Grain Prohibition Act, 1863, affords a better remedy for the laying of poison. It will also be seen, on reference to that Act (*post*), that sowing grain steeped in poison for agricultural purposes is lawful, and such

sowing, therefore, in places where game resort, would not be any evidence of an intent to kill the game under the above section of the Game Act.

Owners and occupiers of land, if the charge can be made out against them, are liable to the penalty, under sect. 3, in the same degree with all other persons, and the Hares Act, 1848, s. 5, repeats its provisions: p. 29.

By the Ground Game Act, 1880, s. 6, no person having a right of killing ground game under this Act or otherwise (see p. 49) shall (*inter alia*), for the purpose of killing ground game, employ poison.

It will be a question for the justices to determine whether the poison was used for the purpose mentioned.

For recovery of the penalty, see p. 255.

Laying poisoned grain, seed, or meal.—The Poisoned Grain Prohibition Act, 1863 (26 & 27 Vict. c. 113), provides—

Sect. 2. Every person who shall offer, or expose for sale, or sell, any grain, seed, or meal, which has been so steeped or dipped in poison, or with which any poison, or any ingredient or preparation has been so mixed, as thereby to render the same poisonous, and calculated to destroy life, shall in either case for every such offence upon summary conviction, as hereinafter provided, forfeit any sum not exceeding 10*l.*

The sale of arsenic, mixed with soot or indigo, is permitted by the Arsenic Act (*supra*, p. 137), and as will be seen below (sect. 4), this Act does not extend to prohibit the sale of materials for dressing seed for *bonâ fide* use in agriculture.

Sect. 3. Every person who shall knowingly and wilfully sow, cast, set, lay, put, or place, or cause to be

sown, cast, set, laid, put, or placed, into, in, or upon any ground or other exposed place or situation, any such grain, seed, or meal which has been so steeped or dipped in poison, or with which poison or any ingredient or preparation has been so mixed as thereby to render such grain, seed, or meal poisonous, and calculated to destroy life, shall, upon a summary conviction thereof as hereinafter provided, forfeit any sum not exceeding ten pounds.

Sect. 4. Nothing in this Act shall prohibit the offering or exposing for sale or selling or the use of any solution or infusion, or any material or ingredient for dressing, protecting, or preparing any grain or seed for *bonâ fide* use in agriculture only, or the sowing of such last-mentioned grain or seed so prepared.

For the recovery of the penalty, see notes to sect. 5.

The effect of these two sections is to prohibit the casting, sowing, laying, &c., of any grain, seed, or meal steeped in poison, and calculated to destroy life on any ground which is exposed, except the sowing for the purposes of agriculture of dressed grain.

It would be a question for the justices to decide whether the grain was sown for such purpose.

It will be observed that on the defendant being shown to have sown, or placed the grain, seed, or meal, the prosecution need prove no intent, as is necessary under the Game Act, 1831, s. 3, but simply that such grain, &c., was of a nature calculated to destroy life; and apparently any life whether of birds, rats, or mice.

The words "ground or exposed situation" clearly apply only to ground open to the air, and not to the interior of a house.

As to malicious injuries to animals, see p. 253.

Sect. 5. All penalties imposed by this Act may be

recovered in England before two justices of the peace; and for that purpose the provisions of the Act of the eleventh and twelfth years of her present Majesty, chapter forty-three, shall extend and apply to this Act, and to all proceedings in relation thereto; and it shall not in any such proceedings be necessary to allege or prove the ground or other place where an offence is committed to be the property of or occupied by any person: Provided always, that the convicting justices or sheriff may, if they or he shall think fit, award to the informer or prosecutor (not being a police constable or peace officer) in any such proceedings any portion not exceeding one moiety of any penalty recovered under the aforesaid enactments: Provided also, that every informer or prosecutor, and every person who shall give evidence against any other person proceeded against under this Act, shall be freed and discharged from any such penalty which he may have incurred for or by reason of his having participated or aided in the commission of the offence with respect to which he shall so inform or prosecute or give evidence, provided the information against such other person has been laid, or such evidence has been given, before the laying of any information (if any) against such informer, prosecutor, or witness for the recovery of any penalty he may have so incurred.

The procedure of 11 & 12 Vict. c. 43 (the Summary Jurisdiction Act, 1848), is now modified by the later Acts of 1879, 1884, and penalties will be recoverable under the provisions of all three Acts by distress and imprisonment. There is no appeal. The provisions of the above section apply also to the following Act. A number of enactments and cases relating to procedure under the Summary Jurisdiction Acts are noted in Chapter XXII., on the recovery of penalties under the Game Act.

Placing poisoned flesh on land.—The Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict. c. 115), provides—

Sect. 2. Every person who shall knowingly and wilfully set, lay, put, or place, or cause to be set, laid, put, or placed, in or upon any land, any flesh or meat which has been mixed with or steeped in, or impregnated with poison or any poisonous ingredient so as to render such flesh or meat poisonous and calculated to destroy life, shall, upon a summary conviction thereof, forfeit any sum not exceeding ten pounds, to be recovered in the manner provided by the Poisoned Grain Prohibition Act, 1863.

The prosecutor need prove no intent, but merely the placing of poisoned flesh calculated to destroy life; *i.e.*, of any animal whatever, on any land, which includes buildings of all descriptions, except under the exceptional cases mentioned in the next section: *Rogers* v. *Hull*, Times, June 15th, 1896. The penalty is recoverable by distress and imprisonment under the Summary Jurisdiction Acts. There is no appeal.

Sect. 3. Nothing in this Act shall make it unlawful for the occupier of any dwelling house or other building, or the owner of any rick or stack of wheat, barley, oats, beans, peas, tares, seeds, or of any cultivated vegetable produce, to put or place or cause to be put or placed in any such dwelling house or other building, or in any inclosed garden attached to such dwelling house, or in the drains connected with any such dwelling house, provided that such drains are so protected with gratings or otherwise as to prevent any dog from entering the same, or within such rick or stack, any poison or poisonous ingredient or preparation for the destruction of rats, mice, or other small vermin.

To put flesh of this description in a garden imperfectly fenced by a quickset hedge, so that a neighbour's dog, after straying through the hedge and eating it, is killed, is (*semble*) an offence under this Act: *Daniel* v. *Janes*, 2 C. P. D. 351.

Although it would be no offence under this section to lay poisoned flesh for rats in a dwelling house, yet if the owner invited a person to enter with a dog, and such dog was killed, the owner would probably be liable in an action for the value of the dog.

As to malicious injuries to domestic animals, see p. 253.

Sect. 4. This Act shall not apply to any grain, seed, or meal within the provisions of the Poisoned Grain Prohibition Act, 1863; and the provisions of the fifth section of the said Poisoned Grain Prohibition Act, 1863, shall apply to any proceedings instituted under this Act, and shall come into operation on the first October one thousand eight hundred and sixty-four.

The procedure is referred to, p. 141.

By the Drugging of Animals Act, 1876 (39 Vict. c. 13), a penalty or imprisonment may be imposed on any person convicted of wilfully and unlawfully administering, or causing to be administered to, or taken by, any horse, cattle, or domestic animal, any poisonous or injurious drug or substance (unless some reasonable cause or excuse is shown on his behalf, or unless he be the owner of the animal or is acting by the owner's authority).

CHAPTER XIII.

GAMEKEEPERS.

GAMEKEEPERS are either (1) appointed or deputed by the lord or lady of a manor, or (2) the ordinary male servants of a game owner.

1. Appointment of gamekeepers for a manor.—The Game Act, 1831, provides as follows :—

Sect. 13. And be it enacted, that it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the crown of any manor, lordship, or royalty appertaining to his Majesty, by writing under hand and seal, or in case of a body corporate, then under the seal of such body corporate, to appoint one or more person or persons as a gamekeeper or gamekeepers to preserve or kill the game within the limits of such manor, lordship, or royalty, or reputed manor, lordship, or royalty, for the use of such lord or steward thereof, and to authorize such gamekeeper or gamekeepers within the said limits to seize and take for the use of such lord or steward all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used within the said limits by any person not authorized to kill game for want of a game certificate.

The lord of a manor includes lady of the same. (Sect. 2.)

The rights of the lord of a manor are dealt with in Chap. II., "Manors."

If a gamekeeper, in any proceedings taken against him, justify as acting under an appointment or deputation (sect. 14, *infra*), from the lord of a manor, he need only show that the lord has a colourable title to the manor in question: *Hunt* v. *Andrews*, 3 B. & Ald. 341; *Rushworth* v. *Craven*, 1 M'C. & Y. 417. If there be no colourable title in the lord, or if the colourable title be rebutted by real title, it is no defence that the gamekeeper himself acted *bonâ fide: Calcraft* v. *Gibbs*, 5 T. R. 19.

A reputed manor is one which, owing to the Court having fallen into desuetude, has ceased to be a legal manor. As to the amount of reputation necessary to prove a manor and the boundaries thereof, see *Rushworth* v. *Craven*, *supra*; *Doe* d. *Molesworth* v. *Sleeman*, 9 Q. B. 298; *Doe* d. *Beck* v. *Heakin*, 6 A. & E. 495; cp. *Carnarvon* v. *Villebois*, 13 M. & W. 313. The devisee of a manor in trust cannot appoint a gamekeeper for his own amusement, but only to preserve the game in the course of due management of the estate: *Webb* v. *Shaftesbury*, 7 Ves. 488. The lord of a manor cannot grant to any other person the right to appoint a gamekeeper. Such a right is a mere emanation of the manor and inalienable: *Calcraft* v. *Gibbs*, 5 T. R. 19. A hundred or wapentake is not a royalty for the purposes of this Act, so as to enable the lord of such hundred to make an appointment, or grant a deputation of gamekeepers: *Aylesbury* v. *Pattison*, Doug. 28. Stewards of the Crown are appointed by the Commissioners of Woods and Forests, who have control over all Crown manors, and grant licences to shoot on Crown lands (10 Geo. 4,

c. 50, s. 14), though in respect of certain forests there are various other Acts prescribing regulations as to the killing of game within them. (See "Forests," Chap. II.)

The appointment of a gamekeeper must be under the hand and seal of the lord himself, though the engagement of an ordinary male servant by an agent is evidence of an engagement by the lord: *R.* v. *King*, 48 J. P. 149. Appointments of a gamekeeper to a manor under sect. 13 are not valid, unless registered with the clerk of the peace under sect. 16 (*infra*), and require a stamp. (*Id.*: see notes.)

Powers of a gamekeeper appointed to a manor.—The powers of a gamekeeper duly appointed by the lord to a manor, or deputed under sect. 14, are very little greater than those of an ordinary servant to a game owner. Such extraordinary powers as they may exercise are set out in sect. 13, and must be clearly expressed in the appointment or deputation. These powers are to seize and take for the use of the lord or steward all such dogs, nets, or other engines or instruments for the killing or taking of game as shall be used within the limits by any person not authorized to kill game for want of a game certificate.

Game certificate now is to be interpreted as licence to kill game. (Game Licence Act, 1860, s. 6.)

It will be observed that the dogs, nets, &c., can only be seized if at the time they are being used (*Wingfield* v. *Stratford*, 1 Wils. 315; *R.* v. *Gardner*, 2 Strange, 1098), not by a mere trespasser, but by a person who has no game certificate, and not by a mere trespasser after game generally, but after game only as mentioned

in sect. 2, although a game licence is required by the Game Licence Act, 1860, to kill snipes, woodcocks, rabbits, &c.

It will be seen that very little advantage attaches to an appointment, and that the powers of an ordinary servant are practically as useful for preserving game. However, if a gamekeeper, duly appointed to a manor, finds a dog being used by an uncertificated person for taking game within the limits, he may seize it for the use of his master, and, if he may do so, he may kill it: *Roy* v. *Duke of Beaufort*, 2 Atk. 190; *Kingsnorth* v. *Bretton*, 5 Taunt. 416; but this right should be carefully exercised, for if the gamekeeper kill the dog unlawfully under this section, he will be liable to an action for damages, unless he can justify under the general law with regard to dogs that trespass: see *Vere* v. *Lord Cawdor*, 11 East, 568, and p. 248.

A gamekeeper of one manor cannot seize the dogs of the gamekeeper of a neighbouring manor, though the second gamekeeper be trespassing on the first-mentioned manor: *Rogers* v. *Carter*, 2 Wils. 387; because such dogs are the property of the keeper's master, and acts of this description tend to border warfare. Nets, engines, &c., do not include guns: a gamekeeper could not be authorized in his appointment to seize guns. The word gun is intentionally omitted here, as it is expressly mentioned in various other sections of the statute: *Daddle* v. *Hickton*, 17 L. T. N. S. 549.

Snares are engines *ejusdem generis* with nets. Cp. sect. 3: *Allen* v. *Thompson*, L. R. 5 Q. B. 336; 39 L. J. M. C. 102.

Any keeper, whether appointed, or deputed, or not, may seize game recently killed, found by him in the

possession of trespassers (sect. 36), but only game as defined in sect. 2.

Where a gamekeeper kills game within a manor he is presumed to kill it on behalf of, and for the use of, his master; for where an act may be lawful or unlawful, the law presumes the former until the latter be proved: *Spurrier* v. *Vale*, 10 East, 413.

With the exception of the above limited powers, an appointed or deputed gamekeeper has the same rights, and is under the same liabilities, as an ordinary gamekeeper. See below.

Grant of deputations by lords of manors.—The Game Act provides:—

Sect. 14. And be it enacted, that it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty, to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, to be a gamekeeper for any such manor, lordship, or royalty, or reputed manor, lordship, or royalty, or for such division or district of such manor, lordship, or royalty, as such lord or steward of the Crown shall think fit, and to authorize such person, as gamekeeper, to kill game within the same for his own use or for the use of any other person or persons who may be specified in such appointment or deputation, and also to give to such person all such powers and authorities as may by virtue of this Act be given to any gamekeeper of a manor; and no person so appointed gamekeeper, and empowered to kill game for his own use or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or steward of the Crown of the manor,

lordship, or royalty, or reputed manor, lordship, or royalty, for which such deputation or appointment shall be given, shall be deemed to be or shall be entered or paid for as the gamekeeper or male servant of the lord or steward making such appointment or deputation, anything in any Act or Acts contained to the contrary notwithstanding.

As to the powers of a deputed gamekeeper, see the notes to sect. 13. A deputation must be stamped and registered. (Sect. 16, *infra*.)

Deputations granted by Welsh landowners.—The Game Act provides—

Sect. 15. And be it enacted, that it shall be lawful for every person who shall be entitled to kill the game upon any lands in Wales of the clear annual value of five hundred pounds, whereof he shall be seised in fee or as of freehold, or to which he shall otherwise be beneficially entitled in his own right, if such lands shall not be within the bounds of any manor, lordship, or royalty, or if, being within the same, they shall have been enfranchised or alienated therefrom, to appoint, by writing under his hand and seal, a gamekeeper or gamekeepers to preserve or kill the game over and upon such his lands, and also over and upon the lands in Wales of any other person, who, being entitled to kill the game upon such last-mentioned lands, shall by licence in writing authorize him to appoint a gamekeeper or gamekeepers to preserve or kill the game thereupon, such last-mentioned lands not being within the bounds of any manor, lordship, or royalty, or having been enfranchised or alienated therefrom; and it shall be lawful for the person so appointing a gamekeeper or gamekeepers to authorize him or them to seize and take, for the use of the person so appointing, upon the lands of which he or they shall be appointed gamekeeper or gamekeepers, all such dogs, nets, and other engines and

instruments for the killing or taking of game as shall be used upon the said lands by any person not authorized to kill game for want of a game certificate.

See the notes to sect. 13.

Registration and stamping of appointments and deputations.—

Sect. 16. Provided always, and be it enacted, that no appointment or deputation of any person as a gamekeeper by virtue of this Act shall be valid unless and until it shall be registered with the clerk of the peace for the county, riding, division, liberty, franchise, city, or town wherein the manor, lordship, or royalty, or reputed manor, lordship, or royalty, or the lands, shall be situate, for or in respect of which such person shall have been appointed gamekeeper; and in case the appointment of any person as gamekeeper shall expire or be revoked, by dismissal or otherwise, all powers and authorities given to him by virtue of this Act shall immediately cease and determine.

A deputation or appointment is no evidence of qualification, unless it has been registered under this section: *Rushworth* v. *Craven*, 1 M'C. & Y. 417; and no one possesses the powers of an appointed or deputed gamekeeper unless his appointment or deputation is so registered: *Bush* v. *Green*, 4 Bing. N. C. 49.

Every deputation and appointment requires a ten shilling stamp. (Stamp Act, 1891, Sch. 1.) There seems no reason why the deputation or appointment of one gamekeeper by one lord to several manors should require more than one document and one stamp, but if more than one gamekeeper is appointed by the same document, a separate stamp would be required for each. If the lord die, fresh appointments must be made, and,

as set out above, a deputation or appointment expires with the termination of the gamekeeper's service.

2. **Gamekeepers in ordinary — Service.**—The gamekeepers of a game owner, as distinguished from the appointed or deputed gamekeepers on a manor, are merely male servants of their master, who must pay a tax for them as such. (32 & 33 Vict. c. 14.) A gamekeeper is hired in the same manner as a servant, can be discharged with a month's notice, or in case of misbehaviour, without notice, and, if permitted to occupy a house whilst in his master's employ, is not a tenant so as to require notice to quit, but must leave the cottage at the same time as he quits the service: *Bertie* v. *Beaumont*, 16 E. 33; *White* v. *Bailey*, 30 L. J. C. P. 253.

A gamekeeper may quit service on giving a month's notice.

Licences.—A master may take out for any male servant, for whom he pays tax, a game licence, for which only 2*l.* is payable, and which will enable such keeper to kill game and snipes, woodcocks, quails, landrails, rabbits, and deer on the lands on which such master has a right to kill game (Game Licence Act, 1860, ss. 2, 7, 8), and on those lands only. The keeper so licensed may carry a gun outside the limits, and may assist his master, if duly licensed, when killing game (*Ibid.* s. 5); but if he use his gun or other means to kill game outside such limits, he becomes liable to all the penalties of an unlicensed person. (*Ibid.* s. 9; Game Act, 1831, s. 6.)

The game licence of a keeper, if current at the termi-

nation of his service, can be indorsed to his successor by an officer of excise. (Game Licence Act, s. 8.)

No deputed gamekeeper may sell game (as defined by Game Act, s. 2) on his own account, unless he have a licence to kill game of the value of 3*l.* (*Ibid.* s. 6; Game Act, 1831, s. 17.)

If a keeper have a licence of 2*l.*, he may sell game on his master's account, provided he has his master's written authority to do so. (*Ibid.*)

If a keeper have no licence to kill game, he requires a gun licence if he carry a gun: see Chap. XVI. And as to dog licences, see Chap. XVII.

Night shooting.—Keepers to owners of land may not shoot game (Game Act, 1831, s. 2) at night (Hares Act, 1848, ss. 5, 7); to tenants of land or tenants' shooting tenants, may not shoot game or rabbits at night, nor employ spring traps except in rabbit holes. (Ground Game Act, 1880, s. 5; *Saunders* v. *Pitfield*, 58 L. T. 108.)

Arrest.—A keeper has no power to arrest trespassers in pursuit of game on his master's land except under the following circumstances:—

1. In the case of poachers by day, under the circumstances set out in sect. 31 of the Game Act, 1831, for refusal to give a true name and address, or wilfully continuing or returning on land when ordered to quit. See p. 84.
2. In the case of night poachers, under the Night Poaching Act, 1828, ss. 1, 2, 9, and the Night Poaching Act, 1844, for the following offences only, viz., (a) when by night unlawfully catching

or destroying game (sect. 13), or rabbits, on any land, open or inclosed, or in the openings, outlets or gates, or adjoining highways; (b) when by night, to the number of three or more, armed on land, open or inclosed, for the purpose of catching or destroying game or rabbits; (c) when by night on land, open or inclosed, with a gun, &c., for the purpose of taking game, not rabbits (p. 101). But no keeper may lay wait on the high road and arrest poachers going or returning from an expedition by night; nor may he arrest them on the high road, unless the road adjoins his master's land and they are actually catching rabbits there, or unless he has pursued them there, whilst doing so, from his master's land; nor may he arrest night poachers armed with guns on land, open or inclosed, if there is no game there, but only rabbits, unless they are three or more in number, or are actually catching rabbits. No keeper, whose master is not the owner or occupier of lands, can arrest night poachers under the Game Acts. Night, under the Night Poaching Acts, is defined by sect. 12.

3. In the case of persons committing an indictable offence between 9 a.m. and 6 p.m., anybody whatever may apprehend them, and hand them over to a constable. (14 & 15 Vict. c. 19, s. 11.) See p. 102.
4. In the case of poachers in hare and rabbit warrens, such persons may be arrested if found *in flagrante delicto*, and handed over to the police by anyone. (24 & 25 Vict. c. 96, s. 103.) See p. 132.

Persons maliciously and unlawfully setting fire, or attempting to set fire, to growing crops, or heath, furze, gorse, fern or plantations, or stacks of hay or corn, may be apprehended by the owner of the property, or his servants, or any person authorized by him. (24 & 25 Vict. c. 97, ss. 16, 61.)

Search.—No power of search is given to a keeper by the Game Acts, and he searches a poacher or any one else at his peril.

He may seize game, as defined by Game Act, s. 2, which he sees in the possession of poachers, by day or night, recently killed, but not a gun. (*Ibid.* sect. 36.) See p. 89.

As to powers of keepers of deer, see Chap. XIV.

CHAPTER XIV.

DEER.

Deer are not game within the meaning of the Game Act, 1831, and are not protected by any provisions as to close time in England.

The Game Licence Act, 1860, s. 2, requires all persons intending to take or kill them to take out a licence to kill game, unless (sect. 5) they are hunting them with hounds, or are owners or occupiers of inclosed land, or persons acting by the direction or permission of such owners or occupiers, taking or killing deer on such lands. No excise licence is required to sell deer.

Property in deer.—When deer are found wild on inclosed land, the tenant, if no grant or reservation of his sporting rights have been made, can kill them in the same manner as other game (see p. 25), provided he observe the law as to deer in a forest, chase, purlieu, or enclosure where they are usually kept. (*Vide infra.*)

A reservation of the sporting rights by the landlord would include a right to kill and take deer; but a reservation of the "game" would not: cp. *Spicer* v. *Barnard*, 28 L. J. M. C. 176.

If deer are reclaimed, kept in an enclosure for profit, their fawns are marked, and they are fed, they become

like cattle, and are distrainable, and when the owner dies they pass to his executors: *Morgan* v. *Earl of Abergavenny*, 8 C. B. 768; *Ford* v. *Tynte*, 31 L. J. Ch. 177; *Davies* v. *Powell*, Willes' Rep. 46. Wild deer would, like game, pass to the heir.

It is larceny at common law to steal tame deer kept in an enclosure; but there are no summary remedies by statute against trespassers in pursuit of deer when wild, save under the conditions hereinafter mentioned, and when these conditions are not fulfilled recourse can only be had to an action at law for trespass.

If a tenant kill deer when reserved to the landlord, the landlord's remedy would be an action for breach of covenant or agreement.

Deer in a forest, chase, purlieu, or enclosure.—When deer are found in a forest, chase, or purlieu (see p. 21), whether enclosed or unenclosed, or in enclosed land where they have been usually kept, special protection is afforded them by certain sections of the Larceny Act, 1861 (24 & 25 Vict. c. 96), which treats them as a species of property, whether they be reclaimed or unreclaimed.

Deer defined.—For the purposes of this Act, it may be taken that the word deer includes all kinds, both sexes, and all ages: see *R.* v. *Strange*, 1 Cox, C. C. 58.

This was a decision on 7 & 8 Geo. 4, c. 29, s. 26, a corresponding enactment to the Larceny Act with regard to deer, and repealed by it.

The following are the enactments of the Larceny Act:—

Hunting and killing deer in unenclosed forests.—Sect. 12. Whosoever shall unlawfully and wilfully

course, hunt, snare or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the uninclosed part of any forest, chase, or purlieu, shall, for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum not exceeding 50*l.* as to the justice shall seem meet.

In default of payment, imprisonment may be imposed according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 107, S. J. Act, 1884, Sched.)

For recovery of the penalty, appeal, &c., see p. 265.

After previous conviction.—

And whosoever, having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or by any former Act of Parliament, shall afterwards commit any of the offences hereinbefore enumerated, whether such second offence be of the same description as the first or not, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour (*and with or without solitary confinement: repealed Stat. Law Rev.* (*No.* 2) *Act*, 1893), and if a male under the age of sixteen years, with or without whipping.

The justices or the jury must be satisfied, in order to a conviction under this section, that the defendant was wilfully and unlawfully coursing and hunting the deer. This is purely a question of fact. Hunt would mean in search of or following after. (Webster's Eng. Dic.)

An owner of a dog which breaks close, and hunts the deer without the consent of his master, would not be liable under the above section, but if he knew his dog to be in the habit of chasing the deer, and yet allows it

to be at large in or near a forest, he might be liable in an action for the damage the dog does: *Read* v. *Edwards*, 34 L. J. C. P. 31; 11 L. T. 311.

Forest in this section means only a legal forest, and so with chase. There are many districts which have been disafforested, and preserve only the name. The New Forest is practically the only uninclosed forest which at all preserves its original character, and in which a herd of deer is now kept. In Windsor Forest the deer are parked in inclosures. (See sect. 13.)

Purlieu.—In former days a 40*s.* freeholder, in the purlieu, might hunt deer with dogs towards the forest (Manwood, 4th edit., p. 292); but the introduction of arms of precision, and the scarcity of deer in later times presumably made it necessary that the law should protect deer as well in the purlieu as the forest. (See Chap. II., p. 21.)

Unenclosed.—See note to sect. 13, "enclosed."

Previous conviction.—By a decision under a similar section in 42 Geo. 3, c. 107, it was held that upon indictment for a second offence objection might be taken to the validity of the previous conviction, and if it be bad the conviction for felony cannot stand: *R.* v. *Allen*, R. & R. 513. And a commitment under 7 & 8 Geo. 4, c. 29, s. 26, reciting that the defendant had killed a deer, but not that it was killed in the uninclosed part of a forest, chase, or purlieu, was held bad: *R.* v. *King*, 1 D. & L. 721; 13 L. J. M. C. 43.

Where a summary conviction did not state the place where the offence was committed, but awarded the

penalty to the overseers of D. in the said county "where the offence was committed," it was held good: *R.* v. *Weale*, 5 C. & P. 135.

As to proof of previous convictions, see sect. 116.

Hunting and killing deer in inclosed lands and forest, &c.—Sect. 13 provides that—

Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land where deer shall be usually kept, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour (*and with or without solitary confinement: repealed Stat. Law Rev.* (*No.* 2) *Act*, 1893), and if a male under the age of six years, with or without whipping.

Unlawfully and wilfully.—See notes to sect. 12, *supra*.

Inclosed.—This does not mean necessarily so fenced that the deer cannot pass. Thus, under 7 & 8 Geo. 4, c. 29, s. 23, it was held that an inclosure of the Forest of Dean made under a statute for the protection of timber, and surrounded by a ditch and bank, which were sufficient to prevent cattle from getting into it, but over which the deer could pass and repass at will, was an inclosed part of a forest: *R.* v. *Money*, Russ. C. & M. 5th ed., p. 298 (vol. 2); cp. *Tapsell* v. *Crosskey*, 10 L. J. Ex. 188; 7 M. & W. 441; *Allaway* v. *Wagstaff*, 29 L. J. Ex. 51.

Where deer shall be usually kept.—These words refer only to inclosed land, and not to the inclosed part of a forest, chase, or purlieu: *R.* v. *Money*, *supra*.

Unlawful possession of venison.—Sect. 14 provides—

If any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of deer, shall be found in the possession of any person or on the premises of any person with his knowledge, and such person, being taken, or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such snare or engine, and did not keep the same for any unlawful purpose, he shall, on conviction by the justice, forfeit and pay any sum not exceeding twenty pounds; and if any such person shall not, under the said provisions, be liable to conviction, then, for the discovery of the party who actually killed or stole such deer, the justice, at his discretion, as the evidence given and the circumstances of the case shall require, may summon before him every person through whose hands such deer, or the head, skin, or other part thereof, shall appear to have passed; and if the person from whom the same shall have been first received, or who shall have had possession thereof, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, be liable to the payment of such sum of money as is hereinbefore last mentioned.

In default of payment, imprisonment may be imposed according to the scale in the Summary Jurisdiction Act, 1879, s. 5 (sect. 107, S. J. Act, 1884, Sched.).

For the recovery of the penalty, see p. 265.

As to search warrants, see sect. 103, *infra*.

Setting snares or destroying park fences.—Sect. 15 provides—

Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase, or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer shall usually be kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept, shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding twenty pounds, as to the justice shall seem meet.

For the recovery of the penalty, see p. 265.

Imprisonment in default of payment, see notes to sect. 14; and for the meaning of inclosed forest, see notes to sect. 13.

Engine will mean *ejusdem generis* with snare, and would not include a gun, unless the gun were set as a snare, for the word firearms is used in sect. 16 in addition to snare and engine, and they must consequently be inferred to have been intentionally omitted here: cp. Game Act, s. 13; *Daddle* v. *Hickton*, 17 L. T. N. S. 549.

Seizure of dogs and guns from deer poachers.

Sect. 16. If any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, every person entrusted with the care of such deer, and any of his assistants, whether in his presence or not, may demand from every such

offender any gun, firearms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer, and in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person intrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this Act, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour (*and with or without solitary confinement*), and if a male under the age of sixteen years, with or without whipping.

The provision as to solitary confinement is now repealed: Stat. Law Rev. (No. 2) Act, 1893.

The deerkeeper has no right of seizure until a demand has been made in accordance with the section: *R.* v. *Amey*, R. & R. 500; and, in order to justify his demand and subsequent seizure, the keeper must satisfy the jury or justices that the defendant was on the land with the intent mentioned.

Beat here bears the popular sense of the word. Holding a keeper down, although a technical assault, is not a beating within the meaning of the section: *R.* v. *Hale*, 2 C. & K. 326; and beating or wounding a keeper is not an offence under the section, if the keepers are not at the time attempting to seize a gun, dog, &c. under the section, or attempting to arrest the defendant under sect. 103 (*infra*): cp. *R.* v. *Doddridge*, 8 Cox, C. C. 335.

Apprehension of offenders and search warrants.—Sect. 103—

Any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this Act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this Act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law.

Apprehension can only take place lawfully of persons found in the act of committing an offence: *Downing* v. *Capel*, L. R. 2 C. P. 461. It is a question of fact for the jury, where an action is brought for false imprisonment, whether the arrest was immediate or not: *Griffith* v. *Taylor*, L. R. 2 C. P. D. 194; so as to entitle the defendant in the action to notice of action under the Public Authorities Protection Act, 1893, which repeals

sect. 113 of the Larceny Act, 1861, substituting its own provisions therefor. (See p. 270.)

If, as a fact, a felony has been committed, and any private individual makes out a reasonable ground of suspicion, he can justify an arrest at common law: *Beckwith* v. *Philby*, 6 B. & C. 635.

CHAPTER XV.

LICENCES TO KILL GAME.

Apart altogether from the provisions of the game statutes, the revenue laws require persons, who intend to kill certain game, to take out certain licences enabling them to do so. The present regulations with regard to these licences are now entirely contained in the Game Licence Act, 1860, as amended in a few particulars by the Inland Revenue Act, 1883 (46 & 47 Vict. c. 10), ss. 4, 5.

Before 1860, the regulations as to licences to kill game were to be found in 52 Geo. 3, c. 93. That Act styled such licences "certificates," and imposed duties of three pounds thirteen and sixpence for certificates, but the whole Act was repealed by 32 & 33 Vict. c. 14, s. 39, having been in fact superseded in all material points as to future licences by the Game Licence Act, 1860, which will now be the subject of consideration.

Sect. 1 of this Act provides that from and after the passing of this Act the respective duties of assessed taxes now payable under the several Acts of Parliament in that behalf in respect of certificates to kill game in Great Britain, and to deal in game in England, and all the provisions, rules, and directions for assessing, charging, and collecting any of the said duties contained in Sched. L. of the Act passed in the fifty-second year of

King George the Third, chapter 93, and also . . . . the 19th and 20th sections of 1 & 2 Will. 4, c. 32, shall respectively cease and determine, and the same are hereby repealed, except as to any arrears of the said duties respectively, and as to any penalties incurred before the commencement of this Act.

As to licences to deal in game, see p. 200.

Now the Game Act, 1831, s. 5, expressly enacts that that Act was not to affect the provisions of the revenue Acts then in force in the following terms:—

And be it enacted, that nothing in this Act contained shall in anywise affect or alter (except as hereinafter mentioned) any Act or Acts now in force by which any persons using any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, are required to obtain and have annual game certificates; but that all persons who before the commencement of this Act were required to obtain and have such certificates shall after the commencement of this Act be required from time to time to obtain and have the like certificates; and all the powers, provisions and penalties contained in such Act or Acts shall continue in as full force and effect as if this Act had not been made; and that all regulations and provisions contained in any Act or Acts relative to game certificates, so far as they relate to gamekeepers of manors, and to the amount of duty for game certificates to be charged upon or in respect of gamekeepers of manors in the cases specified in such Act or Acts, shall extend and apply to all gamekeepers of lands appointed under this Act as fully and effectually as if they were gamekeepers of manors, and were expressly mentioned in and charged by such Act or Acts.

When the Game Licence Act, 1860, superseded the Revenue Acts then in force, it became necessary to

apply the above section of the Game Act to the new conditions.

And sect. 6 of the Game Licence Act therefore provides—

That nothing herein contained shall extend to repeal, alter, or affect any of the provisions of 11 & 12 Vict. c. 29 further than the term "game certificate" in the said Act used shall be construed to mean a licence to kill game under the provisions of this Act: and that the term game certificate used in 1 & 2 Will. 4, c. 32, shall be construed and read in like manner, and that wherever in the last mentioned Act the duty of three pounds thirteen and sixpence is mentioned, the duty of three pounds on a licence to kill game shall be read in lieu.

The 11 & 12 Vict. c. 29 is the Hares Act, p. 28.

It will thus be understood that the provisions and penalties found and imposed in the Game Act with regard to any offence or regulation are entirely distinct from the purely revenue provisions of this Act, the revenue penalty being in many cases cumulative upon penalties imposed by the game statutes.

The Game Licence Act, 1860, s. 2, provides as follows:—

In lieu of the duties hereby repealed there shall be granted, charged, and paid for and upon the several licences and certificates to take or kill game, and licences to deal in game, hereinafter mentioned, the respective duties or sums of money hereinafter expressed or denoted; (that is to say,)

For a licence in Great Britain or a certificate in Ireland to be taken out by every person who shall use any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or any deer, or

shall take or kill by any means whatever or shall assist in any manner in the taking or killing by any means whatever of any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer.

As to taking, killing, &c., using a dog, &c., see the notes to sect. 4.

The section then continues—

	£	*s.*	*d.*
If such licence or certificate shall be taken out after the (*5th day of April, now*, 46 & 47 *Vict. c.* 10, *s.* 4) 31st day of July, and before the 1st day of November—			
To expire on the 31st day of July in the following year	3	0	0
To expire on the 31st day of October in the same year in which the licence or certificate shall be taken out	2	0	0
If such licence or certificate shall be taken out on or after the 1st day of November—			
To expire on the 31st day of July following	2	0	0
Or for any continuous period of fourteen days to be specified in such licence or certificate (a provision inserted in this Act by 46 & 47 Vict. c. 10, s. 5)	1	0	0
Provided always, that any person having the right to kill game on any lands in England shall be entitled to take out a licence to authorize any servant for whom he shall be chargeable to the duty of assessed taxes as a gamekeeper to kill game upon the same lands, upon payment of the duty of	2	0	0
And for every licence to deal in game in England, to be granted under this Act	2	0	0

As to gamekeepers, see sect. 7, below, and also p. 151.

As to licences to deal in game, see p. 200.

Sect. 3 provides as follows :—

The duties by this Act granted shall be under the management of the Commissioners of Inland Revenue, and shall be deemed to be excise duties, and all the powers, provisions, clauses, regulations, and directions

contained in any Act relating to excise duties or to penalties under excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the duties by this Act granted, and to the penalties hereby imposed, so far as the same are or may be applicable, and shall be observed, applied, and enforced for and in the collecting, securing and recovering of the said duties and penalties hereby granted and imposed respectively, and otherwise in relation thereto, so far as the same shall be consistent with and not superseded by the express provisions of this Act, as fully and effectually as if the same had been herein repeated and specially enacted in this Act with reference to the said last-mentioned duties and penalties respectively.

With regard to the recovery of penalties, see notes to the next section, which provides as follows:—

4. Every person before he shall in Great Britain take, kill, or pursue, or aid or assist in any manner in the taking, killing, or pursuing, by any means whatever, or use any dog, gun, net, or other engine for the purpose of taking, killing, or pursuing any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer, shall take out a proper licence to kill game under this Act, and pay the duty hereby made payable thereon; and if any person shall do any such Act as herein-before mentioned in Great Britain without having duly taken out and having in force such licence as aforesaid, he shall forfeit the sum of twenty pounds.

Except in one or two points, this section is entirely similar to sect. 23 of the Game Act, 1831. The penalty imposed by this Act is an excise penalty and is cumulative upon that imposed by the above section of the Game Act (*q. v.*).

With the exception of the few following remarks, the

whole of the notes to that section as to the meaning of the words and proof of the offence apply here. (See p. 124.)

"Take, kill, and pursue," are one offence: *Laxton* v. *Jefferies*, 58 J. P. 318.

All excise licences commence to be in force on the day of issue (sect. 16); but if a person kill game, and, on its being discovered that he has no licence, proceed to take one out later on the same day, he will not be relieved from the penalty under the above section: cp. *Campbell* v. *Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6; for the licence only operates from the time when it was granted, and does not relate back to the earliest moment of the day.

Game means hares, pheasants, partridges, grouse, heath or moorgame, blackgame, and bustards as defined Game Act, 1831, s. 2.

It is not an offence under the Game Act, 1831, s. 23, to kill woodcocks, snipes, quails, landrails, conies, or deer without a licence.

As to persons who assist in killing the above, see the notes to the exemptions in sect. 5 below.

The penalty of twenty pounds is recoverable as an excise penalty (see p. 268), and no person can lay an information for an offence under this section, except an excise officer; though any person may lay an information for an offence under sect. 23 of the Game Act. For all further particulars as to the above offences, see the notes to that section.

Section 5 of the Act then provides—

The following Exceptions and Exemptions from the duties and provisions of this Act are hereby made and granted; (that is to say)

Exceptions.

1. The taking of woodcocks and snipes with nets or springes in Great Britain.

This exception does not, of course, exempt persons from being prosecuted or sued for trespass if they take woodcocks or snipes on lands when they have no sporting right.

2. The taking or destroying of conies in Great Britain by the proprietor of any warren or of any inclosed ground whatever, or by the tenant of lands, either by himself or by his direction or permission.

The Ground Game Act, 1880, s. 4, also makes an exception of persons killing ground game under the authority conferred by that Act. (See p. 48.)

The following decisions under a somewhat similar exception in 52 Geo. 3, c. 93, Sched. L., will be found in the Tax Cases.

If a person rents the rabbits on a warren he is the proprietor of a warren (No. 251): cf. *Beauchamp* v. *Winn*, L. R. 6 H. L. 223; as to warren, see p. 24.

A member of a corporation which owns a common, is entitled to kill rabbits on it without a licence as being a joint owner (No. 1373).

It is difficult to say whether this section intends that persons need no licence to kill by the direction or permission of a proprietor of enclosed lands, or whether "direction or permission" refer to tenant only. The previous Act of Geo. 3, was in different words, and it would certainly seem that here only the direction or permission of the tenant will exempt the person directed from the necessity of taking out a licence.

Under the previous Act a person authorized by the owner of enclosed lands could kill rabbits for his use without a licence (1070, 1243), but not for their own.

In general the rule seems to be that trespassers and shooting tenants of inclosed lands (see p. 58), alone require a licence to kill game when taking rabbits. As to gun licence, see p. 182.

3. The pursuing and killing of hares respectively by coursing with greyhounds, or by hunting with beagles or other hounds.

The owners and occupiers of inclosed ground, and persons appointed by them under the Hares Act, 1848, to kill hares (see p. 28), are also excepted from the necessity of taking out a licence to kill them, and so are the persons authorized by the Ground Game Act, 1880; see sect. 4. See also exemption 4, below.

4. The pursuing and killing of deer by hunting with hounds.
5. The taking and killing of deer in any enclosed lands, by the owner or occupier of such lands, or by his direction or permission.

As to deer generally, see Chapter XIV.

Exemptions.

1. Any of the Royal Family.
2. Any person appointed a gamekeeper on behalf of her Majesty by the Commissioners of her Majesty's Woods, Forests, and Land Revenues, under the authority of any Act of Parliament relating to the land revenues of the Crown.
3. Any person aiding or assisting in the taking or killing of any game, or any woodcock, snipe, quail, landrail, or coney, or any deer in the company or presence and for the use of another

person who shall have duly obtained, according to the directions of this Act, and in his own right, a licence to kill game, and who shall by virtue of such licence then and there use his own dog, gun, net, or other engine for the taking or killing of such game, woodcock, snipe, quail, landrail, coney, or deer, and who shall not act therein by virtue of any deputation or appointment.

This section exempts beaters, game and gun carriers, assistants, and lookers-on, whilst in company with some duly licensed and qualified person who is shooting with his own dogs and guns, or ferreting, or trapping, but is not a keeper, for a keeper is not licensed "in his own right." The position of beaters and gun-carriers is fairly well understood, and it is not worth while saying more than that they must not shoot with the gun of the licensed person, though they may carry it: *Ex parte Sylvester*, 9 B. & C. 63. They may not carry a gun of their own, though they may not be proved to have used it; for they are in pursuit of game.

They may not take their dog to assist the licensed person. This rule is honoured more in the breach than the observance in many places.

4. And as regards the killing of hares only, all persons who, under the provisions of the Act, 11th and 12th Victoria, Chapter 29, are authorized to kill hares in England without obtaining an annual game certificate.

This Act is set out p. 28, but is now of comparatively small importance since the Ground Game Act became law.

On a charge under sect. 4, conviction under Game Licence Act.—The Act 45 & 46 Vict. c. 72, s. 6, provides as follows:—If upon the hearing of any information exhibited against any person for recovery of the penalty imposed by sect. 4 of the Act 23 & 24 Vict. c. 90, it shall be proved that such person used or carried a gun without having in force a proper licence under the Gun Licence Act, 1870, he shall not be entitled to be wholly acquitted by reason of a failure to prove an offence against the said section, but the Court before whom the said information is heard shall be at liberty to acquit him of the charge contained in the said information and convict him under the Gun Licence Act, 1870, s. 7, and order him to pay the penalty thereby imposed.

As to gun licences, see Chapter XVI.

Licences of deputed keepers and male servants.—Section 7 provides as follows:—

Any person having the right to kill game on any lands in England or Scotland, and being charged or liable to be charged to the assessed tax on servants in respect of any gamekeeper, by whomsoever deputed or appointed, and whether deputed or appointed or not, and any person granting a deputation or appointment in Great Britain to the servant of any other person who shall be duly charged to the assessed tax on servants in respect of such servant, whether as gamekeeper or in any other capacity, with power and authority to take or kill any game, shall respectively be at liberty to take out a licence to kill game on behalf of any such servant, on payment of the duty of two pounds for the year ending on the (fifth day of April, *now*) the thirty-first day of July (see 46 & 47 Vict. c. 10, s. 4), and such licence shall exempt the servant named therein during

his continuance in the same capacity and service, and on his quitting such service shall also exempt any servant who shall succeed him in the same service and capacity, or who shall succeed to the deputation of the same manor or royalty or lands within the year for which the licence is granted, during the remainder of such year; and no such servant on whose behalf a licence shall have been duly obtained as aforesaid shall be required to obtain a licence for himself, or be liable to any penalty by reason of not obtaining a licence in his own name.

As to gamekeepers, appointment, deputation, &c., see Chapter XIII. The Game Act, 1831, s. 14, provides that no person appointed gamekeeper, and empowered to kill game for his own use, or for the use of specified persons, and not for the use of the lord deputing him, shall be deemed to be such lord's servant.

Current licences of keepers transferable to successors.—Section 8 provides as follows:—

Every such licence to kill game taken out on behalf of any such servant as aforesaid shall, upon the revocation of any such deputation or appointment, or on his quitting the service of the master by whom such licence shall have been taken out, be from thenceforth of no further effect as to the person named therein as such servant, or so deputed or appointed as aforesaid; but if within the year for which such licence was granted the said master, on the quitting of such servant, shall employ another servant as gamekeeper in his stead, or the person by whom such deputation or appointment was made shall on the revocation thereof make a new deputation or appointment to any person in his service, or in the service of the same master by whom such licence shall have been taken out, and who shall have been charged or be chargeable to the said assessed tax

on servants as aforesaid, the officer by whom such licence was granted, or the proper officer appointed by the commissioners in that behalf, shall renew such licence for the remainder of that year, on behalf of the fresh servant or the person so newly appointed, as the case may be, without payment of any further duty, by indorsing on such licence the name and place of abode of the said last-mentioned servant, or the person to whom such last-mentioned deputation or appointment shall have been granted, and declaring the same to be a renewed licence free of duty.

Keepers' licences available only on their masters' land.—Sect. 9 provides—

Provided always, that no such licence taken out for or on behalf of any person, being such servant or acting under a deputation or appointment as aforesaid, shall be available for such person in any suit or prosecution where proof shall be given of his doing or having done any act for which a licence is required under this Act on land on which his master had not a right to kill game.

And not only will such gamekeeper be liable to the excise penalty under this Act, but also to the penalties imposed by the Game Act, 1831, s. 23, on persons who kill game without a licence, for that act (sect. 6) provides that if an appointed gamekeeper kill game beyond the limits of his appointment as gamekeeper, and has a licence of less value than (three pounds, thirteen and sixpence, now 23 & 24 Vict. c. 90, s. 6) three pounds, he may be proceeded against as if he had no licence to kill game whatever.

A gamekeeper may, of course, assist his master in the manner mentioned in exemption 3, sect. 5.

Production of licence on demand.—Sect. 10 provides—

If any person shall be discovered doing any act whatever in Great Britain in respect whereof a licence to kill game is required under this Act, by any officer of inland revenue, or by any lord or gamekeeper of the manor, royalty, or lands wherein such person shall then be, or by any person having duly taken out a proper licence to kill game under this Act, or by the owner, landlord, lessee, or occupier of the land on which such person shall then be, it shall be lawful for such officer or other person aforesaid to demand and require from the person so acting the production of a licence to kill game issued to him; and the person so acting is hereby required to produce such licence to the person so demanding the production thereof, and to permit him to read the same, and (if he shall think fit) to take a copy thereof or of any part thereof; or in case no such licence shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so acting forthwith to declare to him his christian and surname and place of residence, and the place at which he shall have taken out such licence; and if such person shall, after such demand made, wilfully refuse to produce and show a licence to kill game issued to him, or in default thereof as aforesaid to give to the person so demanding the same his christian and surname and place of residence, and the place at which he shall have taken out such licence, or if he shall produce any false or fictitious licence, or give any false or fictitious name or place, or if he shall refuse to permit any licence which he may produce to be read, or a copy thereof or of any part thereof to be taken, he shall forfeit the sum of twenty pounds.

Sporting tenants cannot demand a licence from persons sporting on lands over which they have the right of shooting, unless they have a licence themselves.

The demand under this section must be made upon

the land where the act requiring such licence takes place, or, if the person shall move off the land, then so immediately after he has left it, as that the whole forms one transaction: *Scarth* v. *Gardner*, 5 C. & P. 38; it is not necessary that the person making the demand should produce his own licence: the person from whom it is demanded takes the risk of his interlocutor being qualified to make the demand. (*Ibid.*)

The offence of not producing a licence when required to do so is not complete by the mere refusal to produce it, unless the party refuses also on request to give his name and address and the place where the licence was taken out: *Molton* v. *Rogers*, 4 Esp. 215; cp. Game Act, 1831, s. 31, p. 84.

If such person refuses production of his licence, and also his name and address, &c., or gives a false name and address, or fictitious name and places, he is liable to a penalty provided, but the person making the demand cannot swear the information himself: for this is an excise penalty, and only an excise officer can prosecute. Where a person is discovered, therefore, shooting without a licence, the excise should be informed; but if he be doing some act which comes within the provisions of the Game Act, 1831, s. 23, anyone may inform. For the recovery of the above penalty of 20*l.*, see p. 268.

Forfeiture of licence on conviction.—Sect. 11 provides as follows:—

If any person having obtained a licence to kill game under this Act, shall be convicted of any offence under section thirty of the said Act of the first and second years of King William the Fourth, chapter thirty-two, the said licence shall thenceforth be null and void.

If a person be convicted as above he will, if he intend to kill game, require a fresh licence for the remainder of the season.

The offence referred to is trespass in pursuit of game, p. 73.

Lists of licensed persons.—Sect. 12 provides as follows:—

The Commissioners of Inland Revenue shall, when and as they shall see fit, cause lists of the names and residences of the several persons to or for whom licences to kill game have been granted under this Act to be inserted in such newspapers or published in such other manner as to them shall seem proper, distinguishing in such lists the persons acting under any deputation, appointment, or authority from others, and the manors, royalties, or lands for which deputations, appointments, or authorities have been granted, and also distinguishing the rate of duty paid for such licences.

The Commissioners have given up inserting the lists in the newspapers, and if a person require to see such a list he will be furnished with a copy on applying to the local supervisor of excise. As a rule, however, the names of all the persons licensed to kill game in the locality are published in the money-order offices of the district, or on the church door.

Form of licence and place of sale.—Sect. 16 provides:—

All licences and certificates to kill game and to deal in game respectively, under the provisions of this Act, shall be in such form as the Commissioners of Inland Revenue shall from time to time provide in that behalf, and shall denote the amount of duty charged thereon

respectively, and shall be granted, signed, and issued at the Chief Office of Inland Revenue in London, Edinburgh, and Dublin respectively, and by the several supervisors of Excise in their respective districts, or by such other officers of inland revenue and at such places as the said Commissioners shall think fit to employ and appoint respectively in that behalf; and every such licence shall contain the proper christian and surname and place of residence of the person to whom the same shall be granted, with any other particulars which the Commissioners of Inland Revenue may direct to be inserted therein, and shall be dated on the day when the same was actually issued, and shall have effect and be in force upon the day of the issuing thereof, and shall expire on the day therein mentioned for the termination thereof.

Game licences can be obtained at most post offices where money orders are sold.

The licence to kill game, though commencing to be in force on the day of issue, is not retrospective to the early hours of the same day; so that a person taking game in the morning will not be relieved of the penalty (sect. 4) by taking out a licence in the afternoon: *Campbell* v. *Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6.

As to the provisions in the Game Licence Act, 1860, with respect to licences to deal in game, see Chapter XVIII.

Licences available over Great Britain and Ireland.—Section 18 provides:—

Every licence and certificate to kill game taken out respectively in Great Britain and Ireland under this Act by or on behalf of any person in his own right, and not as a gamekeeper or servant, shall be available for the killing of game in any part of the United Kingdom.

But such right to take game is subject to the law of trespass. Thus, the Game Act, 1831, s. 6, provides that every person who shall have obtained an annual game certificate, now licence, to kill game (46 & 47 Vict. c. 10, s. 4), shall be authorized to kill and take game, subject always to an action or to such other proceedings as are hereinafter mentioned for any trespass by him committed in search or pursuit of game. (*Ibid.* s. 30, *et seq.*)

CHAPTER XVI.

GUN LICENCES.

Every person who uses or carries a gun must take out a yearly licence, the cost of which is ten shillings, unless he have in force a licence to kill game.

The provisions with regard to gun licences are all contained in the following Act (33 & 34 Vict. c. 57):—

Sect. 1. This Act may be cited as "The Gun Licence Act, 1870."

Sect. 3. After the first day of April one thousand eight hundred and seventy there shall be granted and paid unto and for the use of her Majesty, her heirs and successors, for and in respect of every licence to be taken out yearly by every person who shall use or carry a gun in the United Kingdom the sum of ten shillings.

It will be noticed that "use or carry" is most comprehensive in its meaning, and this is further accentuated by the terms of the exceptions in sect. 7, *infra*.

Sect. 2. In this Act the term "gun" includes a firearm of any description and an air gun or any other kind of gun from which any shot, bullet, or other missile can be discharged.

The term "Commissioners" means the Commissioners of Inland Revenue.

A mere toy pocket pistol has been held to be a gun: *Campbell* v. *Hadley*, 40 J. P. 756.

Sect. 8. Where a gun is carried in parts by two or more persons in company, each and every one of such persons shall be deemed to carry the gun.

Sect. 7. Every person who shall use or carry a gun elsewhere than in a dwelling-house or the curtilage thereof without having in force a licence duly granted to him under this Act shall forfeit the sum of ten pounds.

Curtilage can only be safely considered to mean the out-buildings, offices, yard, and inclosed ground adjoining a house such as would pass in a conveyance of the house. An orchard is clearly not part of the curtilage; see a treatise on curtilage: 47 J. P. 259; *Asquith* v. *Griffin*, 48 J. P. 724; *Commissioners of Inland Revenue* v. *Goodfellow*, 45 J. P. 588.

This is an excise penalty which can be recovered only on the information of an excise officer. If a person see another carrying a gun unlicensed, he should give information to the excise.

As to the power of constables to demand a licence, see sect. 9, *infra*.

The procedure for the recovery of the above penalty will be found on p. 268.

The section then proceeds:—

Provided always, that the said penalty shall not be incurred by the following persons; namely,—

(1.) By any person in the naval, military, or volunteer service of her Majesty, or in the constabulary or other police force, using or carrying any gun in the performance of his duty, or when engaged in target practice.

(2.) By any person having in force a licence or certificate to kill game granted to him under the laws of excise in that behalf.

(3.) By any person carrying a gun belonging to a

person having in force a licence or certificate to kill game or a licence under this Act, and by order of such licensed or certificated person and for the use of such licensed or certificated person only, if the person carrying the gun shall upon the request of any officer of inland revenue or constabulary, or any constable, owner or occupier of the land on which such gun shall be used or carried, give his true name and address, and also the true name and address of his employer.

As to exceptions (2) and (3), see the Game Licence Act, 1860, ss. 4, 5.

If a gun-carrier with a shooting party do not give the true name and address of himself and his employer, he becomes liable to the above penalty and also to the penalty under sect. 9 below.

(4.) By the occupier of any lands using or carrying a gun for the purpose only of scaring birds or of killing vermin on such lands, or by any person using or carrying a gun for the purpose only of scaring birds or of killing vermin on any lands by order of the occupier thereof, who shall have in force a licence or certificate to kill game or a licence under this Act.

Vermin are not defined by the Act. Rabbits could hardly be considered vermin. They are beasts of warren; they are game within the meaning of the Game Licence Act, 1860, and persons killing ground game under the Ground Game Act, 1880, are expressly required (sect. 4) to take out a gun licence under this Act: see also *Bellew* v. *Langdon*, Cro. Eliz. 876.

It would be difficult for justices, in the face of the above authorities, to find that rabbits which had been left to rot on the ground were vermin, much less if they had been used for the market or pot.

Rooks have been declared to be noxious animals: 24 Hen. 8, c. 10; 8 Eliz. c. 15; *Hannam* v. *Mockett*, 2 B. & C. 934.

(5.) By any gunsmith, or his servant carrying a gun in the ordinary course of the trade of a gunsmith, or using a gun by way of testing or regulating its strength or quality in a place specially set apart for the purpose.

(6.) By any person carrying a gun in the ordinary course of his trade or business as a common carrier.

In any information for the recovery of the penalty imposed by this section, it shall be sufficient to allege that the defendant used or carried a gun without having a licence in force under this Act, and it shall lie upon the defendant to prove that he is a person not incurring the penalty by virtue of the proviso contained in this section.

These exceptions are questions of fact for the justices to determine.

Gun licences regulated by the Excise Acts.—Sect. 4. The said duty and licence shall be an excise duty and licence, and shall be under the management of the Commissioners, and all the provisions in any Act relating to excise duties or licences or to penalties under Excise Acts, and now or hereafter in force, shall apply to the said duty hereby granted, and the licence relating thereto, and the penalties hereby imposed, so far as the same are applicable and not inconsistent with the express provisions of this Act.

See "Recovery of Excise Penalties," p. 268.

Form and date of licence.—Sect. 5. Every licence to be granted under this Act shall be in such form and

shall be granted by such officer of inland revenue and at such place as the Commissioners shall direct, and shall contain the christian and surname and place of residence of the person to whom the same shall be granted, and shall be dated on the day on which the same shall be granted, and shall expire on the thirty-first day of [March, now Customs and Inland Revenue Act, 1883, s. 6] July next following the day of the date thereof; but no licence under this Act shall be granted upon payment of a less sum than the duty for a whole year, nor shall any such licence be transferable.

Gun licences can be purchased at any money order office. A keeper's game licence is transferable to his successor, if he leave the service of his master before it has expired: Game Licence Act, 1860, ss. 7, 8; but this is not so with a gun licence.

Game licences expire on July 31 in every year, if taken out for the year: *Ibid.* s. 2. A licence subsequently taken out is no defence to a charge of carrying a gun previously on the same day: cp. *Campbell* v. *Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6.

Register of licences.—Sect. 6. Every officer who shall grant licences under this Act shall keep a register of all such licences granted by him, specifying the christian and surname and place of residence of every person licensed, and the date of each licence, and any justice of the peace or officer of constabulary or constable, or any person licensed under this Act, may at any convenient time inspect such register of licences for the current or preceding year.

A list of persons holding gun licences in the locality is usually posted up in the parish post office, or on the church door.

Production of gun licence on demand.—Sect. 9. It shall be lawful for any officer of inland revenue or for any officer of constabulary or any constable to demand from any person using or carrying a gun (not being a person in the naval, military, or volunteer service of her Majesty, or in the constabulary or other police force, using or carrying a gun in the performance of his duty) the production of a licence granted to such person under this Act.

If the person upon whom the demand is made shall not produce a licence duly granted to him under this Act, or a licence or certificate to kill game granted to him under the laws of excise, and permit the officer or constable demanding the production thereof to read such licence or certificate, it shall be lawful for such officer or constable to require such person to declare to him immediately his christian and surname and place of residence, and if such person shall refuse to declare his christian and surname and place of residence as aforesaid, he shall for such refusal forfeit the penalty of ten pounds over and above any other penalty to which he may be liable under this or any other Act of Parliament; and it shall be lawful for such officer or constable to arrest such person so refusing, and to convey him before any justice of the peace having jurisdiction at the place where the offence shall be committed, and such justice shall, upon due proof on oath of the offence, or upon the confession of the accused person, convict such person in the penalty aforesaid, or in some mitigated portion thereof, not being less than one fourth; and if such penalty be not immediately paid into the hands of the officer or constable (who is hereby required to receive and pay over the same to the Commissioners) such justice shall commit the offender to hard labour in the proper house of correction for any period not exceeding one month nor less than seven days, or until the penalty shall be sooner paid.

If only one justice hears the cases the penalty cannot

exceed twenty shillings. (S. J. Act, 1879, s. 20, sub-s. 7.) Although the penalty can be only mitigated to fifty shillings under the section, yet for a first offence it can be reduced to any sum. (*Ibid.* s. 4.) The imprisonment in default is regulated by the scale. (*Ibid.* s. 5.) In cases of previous conviction, see *Murray* v. *Thompson*, 53 J. P. 70. The offence under this section is not the refusal to produce a licence merely; the defendant may not have one; but it is the refusal, on failure to produce a licence, to give his name and address: cp. the Game Licence Act, 1860, s. 10; Game Act, 1831, s. 31.

The justices may (53 & 54 Vict. c. 21, s. 21) convict under this section on the information of the constable without the intervention of an excise officer. On a failure to sustain a charge against a defendant under the Game Licence Act, 1860, s. 4, he may be convicted under the above section. (45 & 46 Vict. c. 72, s. 6.)

Sect. 10. It shall be lawful for any officer of inland revenue, officer of constabulary, or constable, who may see any person using or carrying a gun, to enter and remain so long as may be necessary upon any lands or upon any premises (other than a dwelling-house or the curtilage thereof) for the purpose of making the demand specified in the preceding section.

The meaning of curtilage is discussed in the notes to sect. 7.

Forfeiture of licence on conviction for trespass.—Sect. 11. If any person having obtained a licence under this Act shall be convicted of any offence under section thirty of the Act of the first and second years of King William the Fourth, chapter thirty-two, the said licence shall thenceforth be null and void.

The offence referred to is trespass in pursuit of game: see p. 73; and cp. the Game Licence Act, 1860, s. 11. A fresh licence for the remainder of the year will be required by any person so convicted, who intends to use a gun thereafter.

Carrying a gun in prohibited districts.—Sect. 12. No licence granted under this Act shall entitle the person to whom the same is granted to use, carry, or have in his custody or possession any firearm in any part of the United Kingdom where such person is by any other Act now or hereafter in force forbidden to use, carry, or have in his custody or possession any firearm, nor to entitle such person to use, carry, or have in his custody or possession any firearm unless he shall have obtained a licence or permission so to do from any authority empowered by any such other Act to grant such licence or permission.

CHAPTER XVII.

DOG LICENCES.

The present regulations as to dog licences are contained in the Dog Licence Act, 1867 (30 & 31 Vict. c. 5), as amended in various important particulars by the Customs and Inland Revenue Act, 1878 (41 Vict. c. 15). The Act 16 & 17 Vict. c. 90, is repealed (Dog Licence Act, 1867, s. 1).

Duty on every dog seven and sixpence.—The Customs Act, 1878, s. 17, in lieu of the Dog Licence Act, 1867, s. 3, provides as follows:—

On and after the first day of June, one thousand eight hundred and seventy eight, in lieu of the annual duty of five shillings chargeable under the Act of the thirtieth and thirty-first years of her Majesty's reign, chapter five, in respect of every dog, there shall be granted and charged the annual duty of seven shillings and sixpence, and the said Act shall be read as if the amount of annual duty thereby granted and charged was seven shillings and sixpence: Provided that licences taken out under the said Act prior to the said first day of June shall remain in full force and effect as if this Act had not been passed.

Age of dog.—The Dog Licence Act, 1867, provides—Sect. 10. The duties imposed by this Act shall not be

payable in respect of any dog under the age of six months, and (Customs Act, 1878, s. 20) where an owner or a master of hounds has taken out proper licences for all the hounds entered in any pack kept by him, it shall not be necessary for him to take out a licence in respect of any hound under the age of twelve months, which has never been entered in, or used with, any pack of hounds.

The proof of the age of the dog lies on the defendant. (*Ibid.*, s. 19.)

Exceptions.

(1.) **Blind persons' dogs.**—The Customs Act, 1878, s. 21, provides that nothing in the Dog Licence Act, 1867, or in this Act, shall render a licence necessary in the case of a dog kept and used solely by a blind person for his or her guidance, or render such person liable to any penalty in respect of a dog so kept and used.

(2.) **Shepherds' dogs.**—The Act 32 & 33 Vict. c. 14, s. 39, as to shepherds' dogs is repealed (Customs Act, 1878, s. 18), and farmers and shepherds keeping sheep dogs must obtain an exemption in accordance with the following section of the Customs Act.

Sect. 22. In the case of dogs kept and used solely for the purpose of tending sheep or cattle on a farm, or in the exercise of the calling or occupation of a shepherd, exemption from duty may be obtained by the owners of such dogs in the following manner:

(1.) The Commissioners of Inland Revenue shall cause such forms of declaration to be prepared as may be required for carrying out the purposes of this section:

(2.) The owner, whether a farmer or a shepherd, may fill up and sign a declaration in the prescribed form, wherein shall be stated the number of dogs kept by him solely for use in tending sheep or cattle, or in the exercise of the calling or occupation of a shepherd, and such further particulars as the said commissioners may by the form of declaration require to be therein stated, and upon delivering the declaration so filled up and signed by him to the person named therein as the person to whom the same is to be delivered, he shall be entitled to receive a certificate of exemption from duty in respect of the dog or dogs, not exceeding two in number, kept by him solely for use in tending sheep or cattle, or in the exercise of the calling or occupation of a shepherd, and such certificate shall be dated on the day on which the same shall be issued, and shall terminate on the thirty-first day of December following:

(3.) Where the occupier of a sheep farm owns more than four hundred sheep, which feed on common or uninclosed land, so that more than two dogs are required to be kept by him for the purpose of tending sheep, and such facts are stated in the declaration delivered by him, he shall be entitled to receive a certificate of exemption in respect of a third dog kept by him solely for such purpose, and if the number of his sheep amounts to one thousand, then in respect of a fourth dog so kept, and in respect of an additional dog so kept, for every full number of five hundred sheep so owned by him over and above the number of one thousand: Provided that he shall not be exempted in respect of more than eight dogs kept on the farm:

(4.) Any person who shall deliver a declaration wherein the particulars required to be therein set forth shall not be truly stated, shall forfeit

> the sum of 20*l.*; and any person to whom a certificate of exemption may have been issued who shall not produce and deliver such certificate to be examined and read by any officer of inland revenue or police within a reasonable time after such officer shall request the production of the same, shall forfeit the sum of 5*l.*; and such penalties shall be excise penalties.

The penalties are recoverable in the manner set forth in s. 23 (*infra*).

Where a person, who has an exemption certificate, is summoned for keeping a dog without a licence, he must produce his certificate, and such certificate is a good defence, though it may have been wrongly obtained. Thus, where a farmer having such a certificate was summoned, and at the hearing the officer prosecuting proved seeing a trial of the dog as a sheep and cattle dog, and the dog did not obey its master's orders like a cattle dog, it was held that, as the exemption certificate was some evidence of a right to exemption, the justices were right in dismissing the case, for the prosecutor had failed to prove the dog was not a cattle dog: *James* v. *Nicholas*, 50 J. P. 292. The fact that the defendant is a person reasonably entitled to an exemption certificate in respect of a dog is no defence to a prosecution for keeping the dog without a licence, for the Commissioners of Inland Revenue, and not the justices, are the persons to decide whether he is so entitled, and if the defendant cannot produce an exemption certificate, he must be convicted: *Graham* v. *Haig*, 58 J. P. 835 (Scotch); and the fact that in the opinion of the justices the certificate ought not to have been refused, is not a ground upon which the justices can hold that the

offence is of so trifling a nature that it is inexpedient to inflict any punishment, and thereupon dismiss the information under the Summary Jurisdiction Act, 1879, s. 16: *Phillips* v. *Evans*, 60 J. P. 120.

Dog licences subject to the Excise Acts.—The Dog Licence Act, 1867, s. 4, provides as follows:—

The said duties and licences shall be excise duties and licences, and shall be under the management of the Commissioners of Inland Revenue; and all the powers, provisions, clauses, regulations, and directions, contained in any Act relating to excise duties or licences, or to penalties under Excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the duties hereby granted, and the licences relating thereto, and the penalties hereby imposed so far as the same are applicable, and shall be observed, applied, and enforced for and in the collecting, regulating, and recovering of the duties hereby granted, and the licences relating thereto, and the penalties hereby imposed, and otherwise in relation to the said duties, licences, and penalties, so far as the same shall be consistent with and not superseded by the express provisions of this Act, as fully and effectually as if the same had been herein repeated and specially enacted with reference to the said last-mentioned duties, licences, and penalties respectively: provided that nothing herein contained shall authorize the granting of a licence under this Act upon payment of a less sum than the duty for a whole year.

See "Recovery of penalties" at the end of this chapter.

Form of licence.—Sect. 5. The licences to be taken out under this Act shall be in such form and shall be

granted by such officers of Inland Revenue as the Commissioners of Inland Revenue shall direct; and every licence shall commence on the day on which the same shall be granted, and shall terminate on the thirty-first day of December following.

The exemption certificate (Customs Act, 1878, s. 22) expires on the same day.

Register of licences.—Sect. 6. Every officer who shall be authorized to grant licences under this Act shall keep a register of all such licences granted by him, specifying the name and place of abode of every person licensed, and the number of dogs which each person shall be licensed to keep; and any justice of the peace, or constable or other officer of the peace, may at any convenient time inspect the register of licences granted for the current or preceding year.

Publication of place of sale.—Sect. 7. The Commissioners of Inland Revenue shall cause to be placed upon or near to the door of every church in Great Britain a printed or written notice stating from whom licences to keep dogs can be obtained by persons residing in the parish or place in which such church is situated; and every such notice shall be kept affixed upon or near to the door of such church for such time as the said Commissioners shall direct: provided that no proceeding of any kind, nor any act done by any person in pursuance of this Act, shall be deemed to be invalid or unlawful by reason of such notice not having been placed or kept affixed as aforesaid.

Penalty for keeping dogs without a licence.—Sect. 8. If any person shall keep a dog without having in force a licence granted under this Act authorizing him so to

do, or shall keep a greater number of dogs than he shall be licensed to keep, he shall for every such offence forfeit the sum of five pounds; and every person in whose custody, charge, or possession, or in whose house or premises, any dog shall be found or seen, shall be deemed to be the person who shall keep such dog, unless the contrary be proved, and the owner or master of hounds shall be deemed to be the person keeping the same.

The penalty is recoverable in the manner set out in the Customs Act, 1878, s. 23: *infra*.

It will be a defence to prosecutions under this section to prove that the dog is aged less than six months: the onus lies on the defendant of proving it (Dog Licence Act, 1867, s. 10; Customs Act, 1878, s. 19), or that the dog is one of a pack of hounds, is aged less than twelve months, and has not been entered in or used with the pack. (Customs Act, s. 20.) If a person "walks a hound puppy" he must attend the Court on a summons, and call evidence that he is not the owner. It is a defence to prove as a fact that the owner is a blind man or woman (Customs Act, s. 21), or to put in a certificate of exemption under Customs Act, s. 22: see notes to that section, *supra*.

The defendant is not a competent witness in a prosecution under this section: *Reg.* v. *Sullivan*, 8 I. R. C. L. 404; *Cattell* v. *Ireson*, 27 L. J. M. C. 167.

Although a dog licence commences to be in force on the day it is granted, to be found without a licence at 12.40 p.m. is an offence which cannot be got rid of by taking out a licence at 1.10 p.m. on the same day: *Campbell* v. *Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6.

Production of dog licence on demand.—The Dog Licence Act, 1867, s. 9, provides as follows:—

If any person who shall have taken out a licence under this Act shall not produce and deliver such licence to be examined and read by any officer of excise or police constable within a reasonable time after such officer shall request the production of the same, he shall forfeit the sum of five pounds.

For the recovery of the penalty, see notes to the next mentioned section.

"Within a reasonable time" is a question of fact for the justices. Dog licences may be taken out anywhere, and where a person is found with a dog in Barnet, and says that he took out a licence in London, and that the licence is in his London residence, an officer, who calls at his London residence once, and does not find him at home, is not justified in assuming that he has not got one; he should call again or make an appointment: *R.* v. *Seears*, Times, 7 Aug. 1875 (Middlesex Sessions).

Recovery of penalties.—The Customs Act, 1878, s. 23, provides—

That notwithstanding the provisions in the Excise Acts (applied to penalties under this Act by the Dog Licence Act, s. 4, set out above) relating to the recovery and application of excise penalties, any penalty imposed by the Dog Licence Act, 1867, or this Act, may be either sued for and applied in the manner prescribed by such provisions, or recovered and enforced upon information of a police constable before a court of summary jurisdiction, subject in the latter case to the following provisions:—

(1) The court of summary jurisdiction shall have

power to award costs and to mitigate the penalty to such an amount as the Court may in its discretion think fit.

(2) The penalty when recovered shall notwithstanding anything in the Acts relating to the metropolitan police courts or any other Act, as to one half be paid to the Commissioners of Inland Revenue, and applied in the manner in which excise penalties are by law applicable, and as to the other half be paid and applied in England and Wales for the benefit of the superannuation fund of the police force, to which the police constable, who instituted the prosecution, belonged.

For the ordinary prescribed method in which excise penalties are recoverable, see p. 268.

The proceedings are under the Summary Jurisdiction Acts, but a summons must be served at least ten days before the hearing by an excise officer (4 & 5 Will. 4, c. 51, s. 19). Whether this is necessary when a police constable prosecutes is not certain, but it would be expedient.

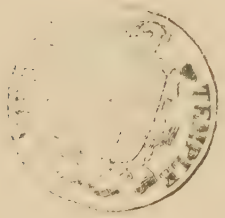
As to costs in a prosecution by an excise officer, see p. 270.

Where proceedings are taken by a police constable under sect. 23, they are under the Summary Jurisdiction Acts. (Customs Act, 1879 (42 & 43 Vict. c. 21), s. 26.) The Small Penalties Act therein mentioned is repealed by the Summary Jurisdiction Act, 1879.

The penalty where a constable prosecutes, as stated above, may be mitigated in the justice's discretion; but where an excise officer prosecutes under the Excise Acts, the justices may mitigate to any sum on a first offence, but to not less than one-fourth for any subsequent offence, whether it is charged as a second offence in the

information or not: *Murray* v. *Thompson*, 22 Q. B. D. 142; 58 L. J. M. C. 41.

If a defendant is, in the justices' view, entitled to a certificate of exemption for a dog as a sheep dog, which, however, the excise have refused to grant him, and is convicted by them of keeping the dog unlicensed, this is not such a trivial offence that they can dismiss the information under the Summary Jurisdiction Act, 1879, s. 16: *Phillips* v. *Evans*, 60 J. P. 120.



CHAPTER XVIII.

LICENSED DEALERS IN GAME.

The Game Act and excise statutes require that two licences shall be taken out by dealers in game, one granted by the district or county borough council, the other by the excise.

1. The council licence—Mode of obtaining.—The Game Act, 1831, s. 18, provides (paragraph 1)—

And be it enacted that the justices of the peace of every county, riding, division, liberty, franchise, city, or town shall hold a special session in the division or district for which they usually act, in the present year, between the fifteenth and the thirtieth days of October, and in every succeeding year in the month of July, for the purpose of granting licences to deal in game, of the holding of which session seven days notice shall be given to each of the justices acting for such division or district.

By 2 & 3 Vict. c. 35, which was repealed by 32 & 33 Vict. c. 14, but kept alive in part by the Game Licence Act, 1860, s. 13, it is provided that such special sessions may not only be held in July, but at any time, and as often as the justices may think fit, after July in every year.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 27, it is provided that the powers, duties, and

liabilities of justices out of sessions (*i. e.*, not in quarter sessions) in relation to (c) the licensing of dealers in game, when arising within a county district, shall be transferred to the district council of the district, and all fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council.

By sect. 32 it is provided that the provisions of this part of the Act respecting the powers, duties, and liabilities of justices out of sessions, which are transferred to a district council, shall apply to a county borough as if it were an urban district, and the county borough council were a district council.

Game, for the purpose of both the council and excise licence, includes only hares, pheasants, partridges, grouse, heath or moorgame, blackgame, and bustards: see notes to sect. 28 below.

A dealer in foreign game only will require a council licence, for an excise licence is required to deal in foreign game (Customs and Inland Revenue Act, 1893, s. 17), and an excise licence is not granted except upon the production of a council licence. (Game Licence Act, 1860, s. 15.)

It will be seen from the above provisions that applications for licences must be made at a meeting of the borough or district council, and the council will presumably constitute themselves a special meeting when their ordinary business is transacted. There is no appeal from their decision.

The Game Act, 1831, s. 18, then proceeds as follows:—

And the majority of the justices assembled at such session, or at some adjournment thereof, not being less

than two, are hereby authorized (if they shall think fit) to grant under their hands, to any person being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail coach, or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a licence according to the Form in the Schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only, kept by him.

The majority of the council will now, it is presumed, grant or refuse the licence at such session or adjournment thereof. A district council quorum is one-third of the number of members; the chairman has a casting vote. As the district council is a body corporate (Local Government Act, 1894, s. 24 (7)), presumably the licence will be under the council seal.

A shopkeeper holding a grocer's licence under 26 & 27 Vict. c. 33 to sell beer not to be drunk on the premises is licensed to sell beer by retail within the meaning of the section: *Shoolbred* v. *St. Pancras JJ.*, 24 Q. B. D. 346; 59 L. J. M. C. 63.

A higgler is defined in Webster as a person "who carries about provisions for sale." Whether the applicants answer to this description is a question for the council to determine.

Form and continuance of licence.—The following is

the form of licence provided in Schedule A. and adapted to a district council :—

Form of Licence.

At a special meeting of the district council of the district of , in the county of , holden at in the said on the day of in the year , The said council assembled at the said special meeting, do hereby authorize and empower A. B. of [*here insert the name, description, and place of residence, and, if more than one in partnership, say*, C. D., of, *&c.*, and E. F., of, *&c.*, being partners,] being a householder [*or* householders], [*or* keeper (*or* keepers) of a shop or stall, *as the case may be*], to buy game from any person authorized to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game;" and do also authorize and empower the said A. B. [*or* C. D. and E. F., being partners] to sell at his [*or* their] house [shop *or* stall], situate in street, and numbered in the said street, any game so bought, provided that the said A. B. [*or* C. D. and E. F., being partners] shall affix to some part of the outside of the front of his [*or* their] house [shop *or* stall], and shall there keep, a board having thereon in clear and legible characters his christian name and surname, [*or* their christian names and surnames,] together with the following words, "Licensed to deal in game."

This licence will expire on July 1.

(Common Seal.)

This licence whenever granted will expire on July 1st then next ensuing (2 & 3 Vict. c. 35, s. 4). It is untransferable. "Person" would include company (Interpretation Act, 1889, s. 19), and the licence would authorize the company in its trade name. As will be seen hereafter, a separate licence is not required by

every member of a partnership (sect. 21), but a person or company or persons in partnership will require a fresh licence for every shop, stall, or house at which they deal in game, and a licence granted under the Game Act by a council must state the particular house, shop, or stall for which it is granted, or an excise licence will be refused. (Inland Revenue General Order, 26th February, 1877.)

Dealers may buy from certificated persons or other dealers: see sects. 27, 28, *infra*.

Licensed dealers must put up a board.—Sect. 18 continues—

Provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep, a board having thereon in clear and legible characters his christian name and surname, together with the following words, (that is to say,) "licensed to deal in game;" and every such licence granted in the present year shall begin to be in force on the first day of November in the present year, and shall continue in force until the fifteenth day of July, one thousand eight hundred and thirty-two, and every such licence granted in any succeeding year shall continue in force for the period of one year next after the granting thereof.

The provision as to the continuance of the licence was repealed by 2 & 3 Vict. c. 35, which, though itself repealed by 32 & 33 Vict. c. 14, is kept alive by the Game Licence Act, 1860, s. 13, and the result is, as stated above, that all licences expire on July 1st.

The board should contain the same name as the licence.

Sect. 21 provides—

Provided always, and be it enacted, that persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged by virtue of this Act to take out more than one licence in any one year to authorize them to deal in game at such house, shop, or stall.

See the notes to sect. 18.

Sects. 19 and 20, referring to the necessity of certificates, are repealed, and the provisions of the Game Licence Act, 1860, substituted: see "Excise Licence" (*infra*). Schedule B. is also repealed. (Statute Law Revision Act, 1874.)

An innkeeper does not require a licence to sell game, which he has bought from a licensed dealer, to guests for consumption in his own house. (Sect. 26.)

Offences of licensed dealers.—Sect. 28 provides—

And be it enacted, that if any person being licensed to deal in game according to this Act shall buy or obtain any game from any person not authorized to sell game for want of a game certificate, or for want of a licence to deal in game; or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop, or stall without such board as aforesaid being affixed to some part of the outside of the front of such house, shop, or stall, at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game, at any place other than his house, shop, or stall where such board shall have been affixed; or if any person not being licensed to deal in game according to this Act shall assume or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device

or pretence, to be a person licensed to deal in game; every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction.

In default of payment, imprisonment may be awarded, with or without hard labour, for any period not exceeding two months, where the penalty, exclusive of costs, does not amount to five pounds; where otherwise, according to the scale in the S. J. Act, 1879, s. 5: (s. 38 partly repealed by S. J. Act, 1884).

For the recovery of the penalty, see p. 255.

Buying game from persons unauthorized to sell.—It will be perfectly clear that under the above section a dealer is liable to a penalty if he buy English game from any person but a dealer, or the holder of a licence to kill game, which is now substituted for the old certificate. (Game Licence Act, 1860, s. 6.) On proof of the fact that the seller is not authorized, the buyer, it would seem, must be convicted without further evidence of guilty knowledge: *R.* v. *Muirhead*, 51 J. P. 760, a Scotch decision.

It will be seen also that the whole of the provisions of the Game Act relating to dealers in game, and to the selling of game either by or to such dealers or others, are re-enacted in sect. 13 of the Game Licence Act, 1860, and applied to the whole of the United Kingdom, and therefore a dealer in England also commits an offence if he buy Irish or Scotch game from a person who has no dealer's licence or no licence to kill game.

Foreign game.—The Customs and Inland Revenue Act, 1893, s. 2, provides that the provisions of the Game Licence Act, 1860, as amended by the Revenue Act, 1861, s. 17, relating to excise licences to deal in game, and the dealing in and selling of game without an excise licence, shall extend and apply to the dealing in and selling of hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards imported from foreign parts into Great Britain or Ireland.

Sect. 13 of the Game Licence Act, 1860, provides—

All the clauses and provisions of the two several Acts passed respectively in the first and second years of king William the Fourth, chapter thirty-two, and the second and third years of her present Majesty, chapter thirty-five, relating to the granting of licences by justices of the peace to deal in game, and to the holding of special sessions by such justices in their respective divisions or districts for the purpose of granting such licences, and also all the clauses, provisions, and penalties contained in the said Acts or either of them relating to dealers in game, and to the selling of game, either by or to such dealers or others, shall, so far as the same are consistent with the express provisions of this Act, and as the same are altered or amended by this Act, extend to and be of full force and effect in and throughout the whole of the United Kingdom, and shall be observed, applied, and enforced as if the same, so altered or amended and made consistent with the express provisions of this Act, had been herein repeated and specially enacted: Provided always, that no person shall be authorized to sell game to any licensed dealer unless he shall have taken out a three pound licence under this Act.

The Game Act, 1831, only applies *primâ facie* to the game of the United Kingdom (*Guyer* v. *Reg.*, 23 Q. B. D. 100), and although all the provisions of the

Act with regard to dealers in game are herein re-enacted it does not appear that the Customs Act, s. 2, above cited, applies to them. It only applies to dealing in game without an *excise* licence. Consequently, although to obtain an excise licence a council licence is requisite (Game Licence Act, 1860), yet a licensed game dealer does not incur any penalty under sect. 28 if he buy foreign game from a person who has no licence to kill or sell game. The absurdity of imposing a penalty on a person buying Russian game from a Russian, because such Russian has no licence to kill game, when such licence is not required to do it, is pointed out by Hawkins, J., in *Guyer* v. *Reg.*, 23 Q. B. D. 100; 58 L. J. M. C. 81.

Live game—tame game.—Sect. 28 of the Game Act, 1831, applies to live game of the United Kingdom as well as dead; and dealers commit an offence under that section if they buy live game from persons unauthorized to sell it: *Helps* v. *Glenister*, 8 B. & C. 553; *Loome* v. *Bailey*, 30 L. J. M. C. 31. Cp. under the excise statutes, *Harnett* v. *Miles*, 48 J. P. 455.

Tame game are also included in the meaning of the word game. This will be more clearly seen by comparing sect. 4. In that section persons other than dealers may keep birds in a mew in close times, whereas dealers are absolutely forbidden to be in the possession of game at all at such times, the latter part of the section thus implying that the restrictions on dealers apply as much to tame game as to wild game. Moreover, to allow dealers to buy tame game from persons who have no licence to sell or kill game, would be to encourage the robbing of pheasantries for the purpose of furnishing live pheasants.

A dealer in game may buy from an occupier hares killed by him, or a person authorized by him under the Ground Game Act, 1880, although such occupier has no licence to kill game. (Ground Game Act, s. 4.)

He may also buy game from a person authorized to sell them by an order of justices made under the Poaching Prevention Act, 1862, s. 2: see p. 121.

Selling without a board.—An excise licence (Customs Act, 1893, s. 2), and therefore a council licence (Game Licence Act, 1860, s. 15), are required to sell foreign game, and dealers selling it therefore require a board. Fixing a board to more than one house, shop, or stall apparently means covering two houses with the same board, when only one house is licensed, or affixing a fresh board to houses, for which the dealer has no licence.

Selling, buying, or possessing game in close time.—Sect. 4 provides:—

And be it enacted, that if any person licensed to deal in game by virtue of this Act as hereinafter mentioned shall buy or sell, or knowingly have in his house, shop, stall, possession, or control, any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; or if any person, not being licensed to deal in game by virtue of this Act as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to

kill or take such birds of game respectively as aforesaid, or shall knowingly have in his house, possession, or control any bird of game (except birds of game kept in a mew or breeding place) after the expiration of forty days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; every such person shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so bought or sold, or found in his house, shop, possession, or control, such sum of money, not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction.

In default of payment, imprisonment with or without hard labour may be imposed for any term not exceeding two calendar months, where the fine, exclusive of costs, does not amount to five pounds: where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly repealed by the S. J. Act, 1884.)

For the recovery of the penalty, see p. 255.

This provision applies to live game as well as dead: *Loome* v. *Bailey*, 30 L. J. M. C. 31; and the latter part of the section, which relates to persons not dealers in game, when compared with the earlier clause relating to dealers, shows that the section relates to tame birds kept in a mew as well as wild ones. It is not an offence under the section to be in possession of birds killed abroad, or presumably imported alive from abroad during the close season: *Guyer* v. *Reg.*, 23 Q. B. D. 100; though an excise licence, and therefore (Game Licence Act, 1860, s. 15) a council licence, is required by a person who deals in them. (Customs and Inland

Revenue Act, 1893, s. 2.) See notes to sect. 28, *supra*.

It would appear from a consideration of sect. 13 of the Game Licence Act, 1860, which re-enacts and applies to the whole of the United Kingdom the provisions of the Game Act with regard to dealers in game, that no defendant under the above section could plead that a Scotch or Irish bird was a foreign bird.

The time allowed a dealer is ten days from the close time, one inclusive, the other exclusive. A dealer, therefore, must get rid of all his pheasants, for example, before February 12th. The close times are provided sect. 3. (Chapter XX.) It was held, under 2 Geo. 3, c. 19, sect. 1, that a dealer would not be liable to a penalty for having dead birds in his possession in close time as provided by that Act if he could show as a fact that they were killed before the close time commenced: *Simpson* v. *Unwin*, 3 B. & Ad. 134; but the wording of sect. 4 of the Game Act is very different from that of 2 Geo. 3, and it is perfectly clear that no dealer can now keep a dead bird or a live bird for more than ten days from the time when it was lawful to kill them. Where a plaintiff agreed to pay the defendant five shillings for eight pheasants if the defendant would deliver them when the plaintiff required them, and the defendant agreed to do so but failed, and, on an action being brought for damages for non-delivery, pleaded that the contract, though made in a lawful period, was bad, because it was a promise to deliver pheasants at any time of the year, and that the plaintiff had requested him to deliver in close time, when it was unlawful for a dealer to be in possession at all, the Court held, on demurrer, that the plea was bad, as it

did not allege that the pheasants were to be delivered in close time: *Porritt* v. *Baker*, 10 Ex. 759. The Court also appeared to be of the view that a dealer might make a contract to deliver at any time a pheasant from his mew; but sect. 4 prohibits a dealer from keeping birds in a mew in close time: see *Loome* v. *Bailey*, 30 L. J. M. C. 31; and the more *Porritt* v. *Baker* is considered, the less weight will be attached to the case, which really only decides the validity of a particular plea.

The onus lies on the defendant of showing that he was not knowingly in the possession of game. (Sect. 42.)

As between master and servant, see sect. 29, *post*.

Possession of a dealer would mean as owner: cp. *Warneford* v. *Kendall*, 10 East, 19; *Walker* v. *Mills*, 2 Brod. & Bing. 1. To pick up a pheasant in a field just killed by poachers would clearly not be possession in close time, unless the dealer were to take it to his stall for sale.

The latter part of the section, which deals with sale and possession by persons not dealers, will be found discussed in Chap. XIX., p. 226.

Pheasant farmers who keep birds for sale all the year round can hardly justify their position under sect. 4. They must have a licence to deal in game in order to sell to any but a licensed dealer, and if they hold a licence to deal in game their possession in close time is unlawful.

Buying and selling by dealers' servants.—The Game Act, 1831, s. 29, provides as follows:—

Provided always, and be it enacted, that the buying

and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in every case where the same would have been lawful if transacted by such licensed dealer himself: provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game.

This section raises the question of the liability of the dealer for the acts of his servants. If the servant buy game unlawfully (sect. 28), the master will only be liable if there is evidence of an express or implied authority on his part to do such an act. If the master leaves the whole conduct of the business to a servant, there can be little question that he would be liable for illicit game buying which takes place to his profit: *Roberts* v. *Woodward*, 34 Sol. J. 640; *Dickenson* v. *Fletcher*, 9 L. R. C. P. 1; *Bond* v. *Evans*, 21 Q. B. D. 249, and the cases there cited; unless he could show that the particular transaction took place contrary to his express orders, or for some other reason beyond the scope of the servant's authority: *R.* v. *Holland JJ.*, 46 J. P. 312; *Newman* v. *Jones*, 17 Q. B. D. 132; 55 L. J. M. C. 113. The cases above cited, which arise under the Licensing Acts, show that the law is construed very strictly against licensed innkeepers whose servants offend, because in these cases there is very little remedy against the servant; but under the Game Act a servant who buys game from poachers on his own account might be made subject to numerous penalties under that Act, and the excise statutes; and if the master

and servant conspired, the servant might be charged with aiding and abetting the master. (S. J. Act, 1848, s. 5; *Wilson* v. *Stewart*, 8 L. T. 277.)

Forfeiture of licence on conviction.—Sect. 22 of the Game Act provides:—

And be it enacted, that if any person licensed by virtue of this Act to deal in game shall during the period of such licence be convicted of any offence whatever against this Act, such licence shall thereupon become null and void.

Any offence whatever would include offences of trespass in pursuit of game (sects. 30, 33), as well as those mentioned in sects. 3, 4, 24, 28.

A person whose licence is forfeited under this section will require a fresh licence to enable him to apply for a new excise licence. His excise licence is, however, apparently not forfeited, but would be useless to him, for if he attempted to sell game with an excise licence only, he would be guilty of an offence under sect. 25.

Possession of eggs of game, &c.—A licensed dealer (together with all other persons) who knowingly has in his house, shop, possession or control, the eggs of any bird of game (sect. 2), or of any swan, wild duck, teal or widgeon, wilfully taken out of the nest upon any land by a person not having the right to kill game upon such land, or not having permission from the person having such right, is liable on conviction before two justices to pay for every egg so found in his house, shop, possession or control, such sum of money not exceeding five shillings as to the justices shall seem meet and costs. (Game Act, 1831, s. 24.)

As to possession or control, see notes to sect. 4, *supra*. As to the penalty, see p. 128.

Sale of hares.—There is no close time for killing hares, except Sunday and Christmas Day (Game Act, 1831, s. 3); but the Hares Preservation Act, 1892 (55 & 56 Vict. c. 8), provides that it shall not be lawful, during the months of March, April, May, June or July, to sell or expose for sale, in any part of Great Britain, any hare or leveret, and any person who, during the months aforesaid, shall so sell or expose for sale any hare or leveret, shall be liable to a penalty not exceeding twenty shillings, including the costs of conviction.

The statute does not impose a penalty for every hare; and therefore, for exposure or sale of any number on one day, the penalty could not be more than one pound including costs.

Sect. 3 provides that this Act shall not apply to foreign hares imported into Great Britain and there sold or exposed for sale.

There is no definition of what "foreign" means, but taking it in its widest sense, it would certainly seem that Irish hares might be sold in Great Britain during the prohibited months.

Sect. 4 provides that the penalty is recoverable under the Summary Jurisdiction Acts, 1848, 1879, 1884.

There will be no appeal: S. J. Act, 1879, s. 19; but a case could be stated on a point of law. (*Ibid.*, s. 33; S. J. Rules, 1886.)

Sand grouse.—The Sand Grouse Protection Act, 1888 (51 & 52 Vict. c. 55), provides that any person who shall expose or offer for sale any sand grouse killed or

taken in the United Kingdom shall be liable on conviction before a justice or justices to pay a penalty for every bird so exposed or offered for sale not exceeding one pound and costs.

The onus will lie on the defendant of showing that the bird was not killed or taken in the United Kingdom.

The procedure is under the Summary Jurisdiction Acts.

There is no appeal. (S. J. Act, 1879, s. 19.)

The Act has been continued till December 31, 1896, by the Expiring Laws Continuance Act, 1895.

Sale of other birds and rabbits.—There is no prohibition in the game laws against the sale of rabbits all the year round. With regard to birds other than game birds, the possession of certain of them is prohibited in close times: see Chap. XX.

It is almost unnecessary to state that if a dealer receive game or any other domestic animal fit for food, which is the subject of larceny, well knowing that it has been unlawfully come by, he is liable to the criminal law.

2. The excise licence.—Having noticed the provisions of the Game Act as to the necessity of obtaining a licence from the district or borough council to deal in game, it remains to consider the provisions of the Excise Acts with regard to the further licence which a dealer is required, for the purposes of the revenue, to take out in addition.

The Game Licence Act, 1860, s. 14, provides as follows:—

Every person who shall have obtained any licence to

deal in game from the justices of the peace, under the provisions of the said two several Acts in the preceding clause mentioned, shall annually, and during the continuance of such licence, and before he shall be empowered to deal in game under such licence, obtain a further licence to deal in game under this Act, on payment of the duty hereby charged thereon; and if any person obtaining a licence from the said justices as aforesaid shall purchase or sell or otherwise deal in game before he shall obtain a licence to deal in game under the provisions of this Act, he shall forfeit the sum of twenty pounds.

This section must be read with sect. 17 of the Revenue (No. 2) Act, 1861, which provides that whereas by the 14th section of the Game Licence Act, 1860, a penalty of 20*l.* is imposed upon any person who shall obtain a licence to deal in game from the justices of the peace under the provisions of certain Acts therein referred to, and who shall purchase or sell or otherwise deal in game before he shall obtain a licence to deal in game under the provisions of the Act in this clause first mentioned: be it enacted that the said penalty shall be incurred by every person who under the provisions of the said Acts so referred to as aforesaid ought to obtain a licence from the justices of the peace to deal in game, and who shall purchase or sell or otherwise deal in game before he shall obtain a proper excise licence under the provisions of the said first-mentioned Act, whether he shall have obtained a licence from the said justices or not: and in any information exhibited for the recovery of the said penalty, it shall be sufficient to allege, and upon the trial thereof to prove, that the defendant dealt in game without the licence required by the said first-mentioned Act.

The above penalty is recoverable only on the information of an officer of excise in the manner in which all excise penalties are recovered (See p. 268.)

The licence formerly granted by the justices is now granted by the district or borough council in the manner described in the first part of this chapter. The duty payable on an excise licence to deal in game is two pounds. (Game Licence Act, 1860, s. 2.)

Game—live, tame, and foreign.—By sect. 13, set out p. 207, all the clauses and provisions of the Game Act, 1831, relating to dealers in game, and to the selling of game by or to such dealers or others, are incorporated in the Game Licence Act, so far as they are not altered by it. Game, therefore, has the same meaning in this Act as it has in the Game Act, viz., hares, pheasants, partridges, grouse, heath or moor game, blackgame, and bustards. And an excise licence is required by all dealers in such game, when alive or dead, tame or wild. Thus a pheasant breeder, who set pheasant eggs under barn-door fowls in coops, cutting one wing of each bird to prevent escape and facilitate identification, and sold two cock pheasants on February 5th to one of the public, was held liable to the penalties imposed by sect. 14 for so selling them without a licence to deal in game: *Harnett* v. *Miles*, 48 J. P. 455.

An excise licence is now required by persons who deal in foreign game imported from abroad into the United Kingdom. Inasmuch as an excise licence is required, a council licence will also be necessary to dealers in foreign game.

It had been held, that inasmuch as the word game when used in this Act has the meaning of game as

defined in the Game Act, 1831, foreign game was not included in the definition: *Guyer* v. *Reg.*, 23 Q. B. D. 100; *Pudney* v. *Eccles*, (1893) 1 Q. B. 52; but with a view to overrule this last-mentioned case, the Customs Act, 1893 (56 & 57 Vict. c. 7), s. 2, provides that the provisions of the Game Licence Act, 1860, as amended by the Revenue (No. 2) Act, 1861, relating to excise licences to deal in game, and the dealing in and selling of game without an excise licence, shall extend and apply to the dealing in and selling of hares, pheasants, partridges, grouse, heath or moor game, blackgame, and bustards imported from foreign parts into Great Britain or Ireland.

It would not appear that the section applies to foreign game until landed in this country, but any person dealing in foreign game after importation into this country must take out a dealer's licence. Whether a person, who has a licence to kill game only, can sell foreign game he has imported without a dealer's licence, is very doubtful. (See p. 223.)

The excise licence expires on July 1st, the same date at which the council licence expires. (2 & 3 Vict. c. 35, s. 4.)

Production of council licence to the excise.—Sect. 15 provides—

Provided always, that no licence to deal in game shall be granted under the provisions of this Act to any person, except upon the production of a licence for the like purpose duly granted to him by the justices of the peace as aforesaid, and then in force; and every officer appointed or authorized to grant licences to deal in game under this Act shall in each year make out a list, to be

kept in his possession, containing the name and place of abode of every person to whom he shall have granted or issued a licence to deal in game under this Act, and such officer shall at all seasonable hours produce such list to any person making application to inspect the same, and shall be entitled to demand and receive for such inspection the sum of one shilling.

A council licence is forfeited for conviction of the holder of any offence under the Game Act, and ceases to be in force from such conviction. (Game Act, s. 22.)

One of the effects of the above section is, that a council licence is required to sell foreign game, although the Game Act does not apply to it. (See notes to sect. 14.)

Grant and form of licences.—Sect. 16 provides that all licences to deal in game shall be in such form as the Commissioners of Inland Revenue shall from time to time provide, shall be granted at the chief offices, and by supervisors of excise in their respective districts, and by such other officers and in such other places as the commissioners shall think fit. The licence is to contain the name and address of the holder, and the date of issue. It shall be in force on the day of issue and expire on the day therein mentioned for the termination thereof.

The licence expires on July 1st. As to being in force on the day of issue, cp. *Campbell* v. *Strangeways*, 3 C. P. D. 105; 47 L. J. M. C. 6.

CHAPTER XIX.

PURCHASE AND SALE OF GAME BY OTHERS THAN DEALERS.

Selling Game.—Sections 17 and 25 of the Game Act, 1831, provide as follows:—

Sect. 17. And be it enacted, that every person who shall have obtained an annual game certificate shall have power to sell game to any person licensed to deal in game, according to the provisions hereinafter mentioned: Provided always, that no game certificate on which a less duty than three pounds thirteen shillings and sixpence is chargeable under the Acts relating to game certificates shall authorize any gamekeeper to sell any game, except on the account and with the written authority of the master whose gamekeeper he is; but that any such gamekeeper selling any game not on the account and with the written authority of such master may be proceeded against under this Act in the same manner, to all intents and purposes, as if he had no game certificate whatsoever.

Sect. 25. And be it enacted, that, if any person not having obtained a game certificate (except such person be licensed to deal in game according to this Act), shall sell or offer for sale any game to any person whatsoever; or if any person authorized to sell game under this Act by virtue of a game certificate shall sell or offer for sale any game to any person whatsoever, except a person licensed to deal in game according to

this Act; every such offender shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so sold or offered for sale such sum of money, not exceeding two pounds, as to the said justices shall seem meet, together with the costs of the conviction.

In default of payment of the fine, imprisonment may be awarded, with or without hard labour, for any term not exceeding two calendar months, where the fine, exclusive of costs, does not amount to five pounds; where otherwise, according to the scale in the Summary Jurisdiction Act, 1879. (Sect. 38, as partly repealed, S. J. Act, 1884.)

For the recovery of penalties under the Game Act, see Chap. XXII.

Game certificate is now to be interpreted licence to kill game, and a duty of 3*l.* 13*s.* 6*d.* means a licence of 3*l.* (Game Licence Act, 1860, s. 6.)

Moreover, a licence taken out for part of the year, or for a consecutive fortnight, will not entitle persons to sell game under sect. 17, for the Game Licence Act, 1860, s. 13, provides that no person shall be authorized to sell game to any licensed dealer unless he shall have taken out a 3*l.* licence under this Act. As to game-keepers, see Chap. XIII.

Game—British and Foreign.—Game is defined (sect. 2), and includes only hares, pheasants, partridges, grouse, heath or moor game, blackgame, and bustards, and means game alive or dead, tame or wild: *Helps* v. *Glenister*, 8 B. & C. 553; *Loome* v. *Bailey*, 30 L. J.

M. C. 31; cp. under the excise statutes, *Harnett* v. *Miles*, 48 J. P. 455. Game means game of the United Kingdom: *Guyer* v. *Reg.*, 23 Q. B. D. 100; 58 L. J. M. C. 81. The whole of the provisions of the Game Act relating to the selling of game by or to dealers or others, are incorporated in the Game Licence Act, 1860, by s. 13, and applied to the United Kingdom.

Now the Customs Act, 1893, s. 2, provides that the provisions of the Game Licence Act, 1860, as amended by the Revenue (No. 2) Act, 1861, relating to excise licences to deal in game, and the dealing in and selling of game without an excise licence, shall extend and apply to the dealing in and selling of hares, pheasants, partridges, grouse, heath or moor game, blackgame, and bustards, imported from foreign parts into Great Britain and Ireland. It is quite clear from the above section that a person who has no licence to kill *or* sell game, cannot sell foreign game without incurring the excise penalty imposed by sect. 14 of the Game Licence Act, 1860.

Now, sect. 17 of the Game Act, as above stated, enables persons holding a licence to kill game to sell game to licensed dealers; and as the whole of the provisions of the Game Act with respect to the selling of game, either by or to dealers or others, are re-enacted in the Game Licence Act (sect. 13), and as the Customs Act applies the provisions of the Game Licence Act, with regard to the dealing in and selling of game without an excise licence, to the dealing in and selling of imported game, it would seem possible that a person who holds a licence to kill game might sell foreign game to a dealer, but this was probably not the intention of the Customs Act. The words "dealing in and selling with-

out a licence," refer back, in all probability, to the preceding clause, viz., excise licence *to deal* in game, and common sense would dictate that this construction of a purely revenue section would be reasonable.

If a person imports game from abroad and sells it here, he is in fact a dealer in game; to require him to take out a dealer's licence, would be consistent with the general purpose of the excise, but to allow him to carry on a trade in foreign game because he is the holder of a licence to kill game of the United Kingdom, would be somewhat of an absurdity. For these reasons, in the present writer's opinion, although any person may import foreign game, immediately it is imported, such person requires a dealer's licence to sell it, and a licence to kill game will not enable him to do so.

Saving Innkeepers.—Sect. 26 of the Game Act provides—

Provided always, and be it further enacted, that it shall be lawful for any innkeeper or tavernkeeper, without any such licence for dealing in game as aforesaid, to sell game for consumption in his own house, such game having been procured from some person licensed to deal in game by virtue of this Act, and not otherwise.

Saving occupiers by the Ground Game Act.—This Act, sect. 4, enables an occupier to sell to a licensed dealer, and no one else, hares killed by him or by persons authorized by him, on land in his occupation under the provisions of the Act without having a licence to kill game. He may not, however, sell hares during the months of March, April, May, June, or July. (Hares Preservation Act, 1892.)

Saving under the Poaching Prevention Act.—A person may sell game under an order of the justices, made in pursuance of sect. 2 of this Act, to a licensed dealer, although he has no licence to kill game.

Buying Game.—Sect. 27 of the Game Act provides—

That if any person, not being licensed to deal in game according to this Act, shall buy any game from any person whatsoever, except from a person licensed to deal in game according to this Act, or *bonâ fide* from a person affixing to the outside of the front of his house, shop, or stall, a board purporting to be the board of a person licensed to deal in game, every such offender shall, on conviction thereof before two justices of the peace, forfeit and pay for every head of game so bought such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction.

In default of payment imprisonment may be imposed for any term not exceeding two calendar months, with or without hard labour, where the fine, exclusive of costs, does not amount to five pounds; where otherwise, in accordance with the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly repealed by S. J. Act, 1884.)

For the recovery of the penalty, see Chap. XXII.

This section refers to game (as defined sect. 2) of the United Kingdom, when alive or dead: *Helps* v. *Glenister*, 8 B. & C. 553; *Loome* v. *Bailey*, 30 L. J. M. C. 31. No person, therefore, can buy live pheasants (*e.g.*) from a breeder who has not a licence to deal in game, or who at any rate does not exhibit a dealer's board (sect. 28) *bonâ fide*. If, as a fact, the person selling has no licence, or exhibits no board, or exhibits a board *malâ fide*, it

would seem that the buyer would be liable to the penalty without further proof of guilty knowledge: *Reg.* v. *Muirhead*, 51 J. P. 761. This was a Scotch decision in the Sheriff's Court.

A person who buys foreign game from a person not licensed to deal in game, would not be liable to penalties under the above section; if he bought to sell again, and is in fact dealing in foreign game, he requires an excise licence to deal in game (see the notes to sect. 25, p. 221); the person who sells foreign game to him without an excise licence is liable to excise penalties. (*Ibid.*)

Buying, selling, and possession in close times.—Sect. 4 provides (*inter alia*) that—

If any person not being licensed to deal in game by virtue of this Act, as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days, one inclusive and the other exclusive, from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid, or shall knowingly have in his house, possession, or control, any bird of game, except birds of game kept in a mew or breeding place after the expiration of forty days, one inclusive, the other exclusive, from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; every such person shall on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so bought or sold, or found in his house, possession, or control, such sum of money not exceeding one pound as to the convicting justices shall seem meet, together with the costs of the conviction.

In default, imprisonment may be imposed for any

term not exceeding two months, with or without hard labour, where the fine, exclusive of costs, shall not amount to five pounds; where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly repealed by S. J. Act, 1884.)

For the recovery of the penalty, see Chap. XXII.

This section refers to birds of game (as defined sect. 2) of the United Kingdom, alive or dead, tame or wild: *Loome* v. *Bailey*, 30 L. J. M. C. 31, and not to foreign game imported into this country: *Guyer* v. *Reg.*, 23 Q. B. D. 100; though any person who deals in foreign game, when imported at any time of the year, requires an excise licence to enable him to do so. (See notes to sect. 25, *supra*.)

The effect of the above section is that no person may sell pheasants (*e.g.*) on any day after the expiration of February 11th. As to the close times, see sect. 3 (Chap. XX.). It is not necessary that the birds, which any person but a licensed dealer is allowed to keep in a mew, should necessarily be in the same mew, or in any mew, during the continuance of close time. Thus, where a person not licensed to deal in game was found, many miles from the mew, with young pheasants in his possession, which had been bred in the mew, in close time, the Court held that, the birds having been reared in the mew, the defendant had committed no offence: *Jenner* v. *Gorringe*, 43 J. P. 781. There was no charge of selling in close time in this case. A contract made at a lawful time by a game dealer to supply birds out of a mew at any time, on request, is not unlawful, though the request be made in close time: *Porritt* v. *Baker*, 10 Ex. 759; but it is obvious from the provisions of the above section, set out at length on p. 209, that a

dealer is prohibited from keeping birds in a mew in close time at all, and it would appear, therefore, that pheasant breeders, who keep birds in a mew all the year round, commit an offence if they keep them in a mew in close time, when they are licensed to deal in game, and if they are not so licensed, but merely hold a licence to kill game, cannot sell them in lawful periods except to a licensed dealer.

Pretending to be a licensed dealer.—Sect. 28, *inter alia*, provides that if any person not being licensed to deal in game, according to this Act, shall assume or pretend by affixing such board (*i.e.*, to the outside of the front of his house, shop, or stall, having thereon his christian name and surname, and the words "licensed to deal in game" (sect. 18)), or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game, every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction.

In default of payment, imprisonment may be imposed for any term not exceeding two calendar months where the fine, exclusive of costs, does not amount to five pounds, where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly repealed S. J. Act, 1884.)

For recovery of the penalty, see Chap. XXII.

Hares.—No person in Great Britain may sell hares in the months of March, April, May, June, and July: see p. 215. (Hares Preservation Act, 1892.)

Sand grouse.—As to selling these, see p. 215. (Sand Grouse Protection Act, 1888.)

Rabbits may be sold all the year round, and without a licence. As to the possession and sale of all other birds than game birds, see "Close times," Chap. XX.

Eggs.—The possession of eggs of game, swans, wild duck, teal, and widgeon, unlawfully taken out of the nest on any land, is made an offence by sect. 24 of the Game Act. (See p. 128.)

CHAPTER XX.

CLOSE TIMES.

Taking game on Sunday and Christmas Day.—The Game Act provides—

2. And be it enacted, that the word "game" shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, blackgame, and bustards.

3. And be it enacted, that if any person whatsoever shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game, on a Sunday or Christmas Day, such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction.

In default of payment, imprisonment may be imposed, with or without hard labour, for any term not exceeding two months, where the fine, exclusive of costs, does not amount to five pounds; where otherwise, according to the scale in the Summary Jurisdiction Act, 1879, s. 5. (Sect. 38, as partly repealed, S. J. Act, 1884.)

It will be noticed that every person, without exception, is forbidden to take game on these days.

The penalty is recoverable in the manner set out Chap. XXII.

"Take" *primâ facie* means "catch," and not the taking and carrying away, which constitute larceny.

The section refers to wild game when alive, and not to larceny of dead game, as to which see p. 9.

But where a farmer set wires on his farm for rabbits, and caught a pheasant in close time, which he released from the wire alive and carried away with him, it was held that the catching the pheasant in the wire, and the picking up and carrying away, was not one continuous act, but that the picking up and carrying away constituted a "taking" within this section; but that it was also material for the justices to consider whether the farmer took the bird away with a view to restore it to liberty, or to kill and keep it, in which latter case they ought to convict: *Watkins* v. *Price*, 47 L. J. M. C. 1.

Where a snare is set on a day before Sunday, and the game is caught on Sunday, the snare is used on Sunday within the words of the section, and the defendant is liable to a penalty, though not present on the ground on Sunday: *Allen* v. *Thompson*, L. R. 5 Q. B. 336; 39 L. J. M. C. 102; 22 L. T. 472. Engine or instrument would mean *ejusdem generis* with gun and net, and a snare is such an engine. (*Ibid.*)

The offence of using a gun, dog, &c. under this section can be committed by two persons, and each is liable to the whole penalty on a joint information: *R.* v. *Littlechild*, L. R. 6 Q. B. 293; 40 L. J. M. C. 137. (See p. 263.)

Killing or taking game birds in close times.—Sect. 3 proceeds as follows:—

And if any person whatsoever shall kill or take any partridge between the first day of February and

the first day of September in any year, or any pheasant between the first day of February and the first day of October in any year, or any black game, (except in the county of Somerset or Devon, or in the New Forest in the county of Southampton,) between the tenth day of December in any year and the twentieth day of August in the succeeding year, or in the county of Somerset or Devon, or in the New Forest aforesaid, between the tenth day of December in any year and the first day of September in the succeeding year, or any grouse commonly called red game between the tenth day of December in any year and the twelfth day of August in the succeeding year, or any bustard between the first day of March and the first day of September in any year, every such person shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so killed or taken such sum of money, not exceeding one pound, as to the said justices shall seem meet, together with the costs of the conviction.

The notes to the earlier part of the section as to the penalty and matter apply here. The words "between February 1 and September 1" show that partridges may be killed on those dates, and so with regard to the other dates mentioned.

An unlicensed person taking game in the close time is liable to penalties under this section as well as sect. 23: *Saunders* v. *Baldy*, L. R. 1 Q. B. 87; 35 L. J. M. C. 71; 13 L. T. 322.

Hares.—There is no close time for hares except Sunday and Christmas Day, but no person may sell them in March, April, May, June, or July. (Hares Preservation Act, 1892.)

Rabbits may be killed all the year round.

Woodcocks, snipes, and other birds the object of sport are not specially protected by the game laws, but are included in the schedule to the Wild Birds Protection Act, 1880.

Selling and possession in close time.—As to illegal sale and possession by licensed dealers of game birds, see sect. 4, p. 209 ; by others than dealers, p. 226 ; and with regard to the eggs of game birds, swans, wild duck, teal, and widgeon (sect. 24), p. 128.

Close time of Wild Birds.

Wild birds, amongst which are to be found many birds usually termed game, but not so styled by the game statutes, are now afforded protection during certain periods of the year by the Wild Birds Protection Acts, 1880, 1881, and 1894, which impose penalties on persons who shoot, attempt to shoot, or use boats or snares to take any wild bird whatever during such periods, with an enhanced penalty in the case of certain birds particularly mentioned in the schedule to the statute of 1880. And by the last-mentioned Act of 1894 the eggs of wild birds are afforded protection on the advice of the county council in a county or part of a county, if the Secretary of State make an order prohibiting their being taken or destroyed in the district mentioned.

The three statutes mentioned are all to be read as one.

The Wild Birds Protection Act, 1880 (43 & 44 Vict. c. 35), provides—

Whereas it is expedient to provide for the protection of wild birds of the United Kingdom during the breeding season :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may for all purposes be cited as the Wild Birds Protection Act, 1880.

2. The words "wild birds" shall for all the purposes of this Act be deemed to mean all wild birds.

7. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-one, and on the same day the Act passed in the session of Parliament holden in the thirty-second and thirty-third years of the reign of her present Majesty, entitled "An Act for the preservation of Sea Birds," and the Act passed in the session of Parliament holden in the thirty-fifth and thirty-sixth years of the reign of her present Majesty, entitled "An Act for the protection of certain wild birds during the breeding season," and the Act passed in the session of Parliament holden in the thirty-ninth and fortieth years of the reign of her present Majesty, entitled "An Act for the preservation of Wild Fowl," shall be repealed.

Shooting and possession of wild birds in close time.—Sect. 3 provides—

Any person who between the first day of March and the first day of August in any year after the passing of this Act shall knowingly and wilfully shoot or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any wild bird, or shall use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have in his control or possession after the fifteenth day of March, any wild bird recently killed or taken, shall, on conviction of any such offence before any two justices of the peace in England and Wales, in the case of any wild bird which

is included in the schedule hereunto annexed, forfeit and pay for every such bird in respect of which an offence has been committed a sum not exceeding one pound, and, in the case of any other wild bird, shall for a first offence be reprimanded and discharged on payment of costs, and for every subsequent offence forfeit and pay for every such wild bird in respect of which an offence is committed a sum of money not exceeding five shillings, in addition to the costs.

The next clause of the section is repealed by 44 & 45 Vict. c. 51. (*Vide infra.*)

It is not an offence under the section to commit any of the acts mentioned on the 1st of March or 1st of August, but only between those dates.

The section is somewhat confused. It imposes a fine for every bird in respect of which an offence has been committed. This is quite simple if the bird is killed, but where a person is charged with using a snare to take a wild bird, and has not actually caught one, presumably he can, at any rate, be fined for attempting to catch one wild bird, and evidence must be adduced to show whether the birds he was attempting to catch must necessarily have been those included in the schedule, in which case he is liable to a fine of one pound; but if the justices are satisfied that the defendant was only trying to catch other wild birds, he will be fined the costs or five shillings, according as the offence is a first or subsequent one. If the defendant was seen to shoot at, and miss several birds of a known species, there seems no reason, if the evidence is satisfactory, why under the words of the section he should not be convicted for each discharge of the gun.

As to sale, control, and possession, cp. *Warneford* v.

Kendall, 10 East, 19; *Walker* v. *Mills*, 2 Brod. & Bing. 1. (Game Act, 1831, ss. 4, 29, p. 212.)

It would probably not be a previous offence to have been convicted of shooting or shooting at a bird on a previous occasion on the same day, so as to make the defendant liable to a fine; but only to have been convicted of an offence under this section on some previous day: cp. *Crepps* v. *Durden*, Cowp. 640.

Except during the periods mentioned in the section, or in an order of a Secretary of State made under the Act (sect. 8), there is no remedy before justices in the case of trespassers who kill wild birds on any land. The owner of the land may remove them if he can without excessive violence. (See p. 69.) The only other remedy is an action of trespass; and where the defendant is a wandering birdcatcher this is unsatisfactory.

The penalty under sect. 3 is recoverable as directed by sect. 5.

Exceptions.—1. The last clause of sect. 3 provides—

This section shall not apply to the owner or occupier of any land, or to any person authorized by the owner or occupier of any land, killing or taking any wild bird on such land not included in the schedule hereto annexed.

Where a person is found in possession of such a bird, the onus will lie on him of proving that it was killed on land by the owner or occupier of such land, or by a person authorized by him.

Persons shooting wild sparrows let out of flower-pots in a field belonging to a public-house do not come

within the exception: *R.* v. *Gilham*, 52 L. T. 326; 49 J. P. 357.

2. The exception provided in the penultimate clause of sect. 3 is repealed by the Wild Birds Protection Act, 1881 (44 & 45 Vict. c. 51), which provides in lieu thereof:—

A person shall not be liable to be convicted under sect. 3 (*supra*) of the Wild Birds Protection Act, 1880, of exposing or offering for sale, or having the control or possession of, any wild bird recently killed, if he satisfies the Court before whom he is charged—

(1) That the killing of such wild bird, if in a place to which the said Act extends, was lawful at the time when, and by the person by whom it was killed; or

(2) That the wild bird was killed in some place to which the said Act does not extend, and the fact that the wild bird was imported from some place to which the said Act does not extend shall, until the contrary is proved, be evidence that the bird was killed in some place to which the said Act does not extend.

Cp. *Whitehead* v. *Smithers*, 2 C. P. D. 553; 46 L. J. M. C. 234, a case decided before the Act.

Penalty on refusing to give name and address.—Sect. 4 provides—

Where any person shall be found offending against this Act, it shall be lawful for any person to require the person so offending to give his christian name, surname, and place of abode, and in case the person so offending shall, after being so required, refuse to give his real name or place of abode, or give an untrue name or place of abode, he shall be liable on being convicted of any

such offence to forfeit and pay, in addition to the penalties imposed by section three, such sum of money not exceeding ten shillings sterling as to the justices shall seem meet.

The penalty is recovered under the Summary Jurisdiction Acts. (Sect. 5.)

It would not be safe for a person to take out a summons against another whom he finds merely in the possession of wild birds recently killed, unless he is certain they were unlawfully killed.

Recovery of penalties.—Sect. 5 provides that all offences under this Act may be prosecuted, and penalties and forfeitures under this Act recovered in England in the manner provided by the Summary Jurisdiction Acts, *i.e.*, 1848, 1879, 1884.

Informations must be laid within six months. (S. J. Act, 1848, s. 11.) The scale of imprisonment in default of payment of the fine is provided by the Summary Jurisdiction Act, 1879, s. 5. There is no appeal. (*Ibid.* s. 19.) A case may be stated on a point of law.

Offences committed within Admiralty jurisdiction.—Sect. 6 provides—

All offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon any land in the United Kingdom, and may be dealt with, inquired of, tried, and determined in any county or place in the United Kingdom in which the offender shall be apprehended or be in custody or be summoned, in the same manner in all respects as if such offences had been actually committed in that county or

place; and in any information or conviction for any such offence the offence may be averred to have been committed "on the high seas."

Where any offence under this Act is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions, or petty sessions, such offence may be prosecuted before any justices of the peace or sheriff in either of such counties or districts.

The Admiralty jurisdiction is the high seas, and the high seas commence below low-water mark, or in the case of creeks or rivers beyond an imaginary line drawn from the two furthest points of land between which the creek or river tide flows. (Archbold's Criminal Pleadings, 21st ed., pp. 35, 485.)

Extension and variation of close times.—Sect. 8 provides—

One of her Majesty's principal Secretaries of State as to Great Britain, and the Lord Lieutenant as to Ireland, may, upon application of the justices in quarter sessions assembled of any county, by order extend or vary the time during which the killing and taking of wild birds or any of them is prohibited by this Act; after the making of which order the penalties imposed by this Act in respect of such wild birds shall in such county apply only to offences committed during the time specified in such order; and the order for the extension or variation of such time shall be published, if made by the Secretary of State, in the *London Gazette*, or if made by the Lord Lieutenant, in the *Dublin Gazette*, and a copy of the *London Gazette* or *Dublin Gazette* containing any order made under this Act shall be evidence of the same having been made.

The powers of the justices are transferred to the

County Council, who will now make application. (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3.)

The following orders have been made in pursuance of this section up to March, 1896, as far as the writer has been able to ascertain. The index to the *Gazette* is not very satisfactory, and the following list is not guaranteed to be complete.

Attention is drawn to the fact that in some of the orders the dates mentioned are inclusive, in others exclusive.

		London Gazette.
Anglesea	Close time for all birds from Mar. 1 to Oct. 1, except curlew, diver, dunbird, eider duck, lapwing, mallard, peewit, plover, pochard, shoveller, snipe, teal, widgeon, wild duck, woodcock, close time for which is between Mar. 1 and Aug. 1	1887, p. 2524
Bedford	Close time for all birds Mar. 1 to Aug. 12, except kingfisher Feb. 1 to Aug. 31	1896, p. 1038
Cheshire	Close time for all birds to be from Mar. 1 to Aug. 12	1895, p. 4027
Durham	Close time for all birds to be from Mar. 1 to Aug. 31	1891, p. 683
Essex	Close time for all birds to be from Mar. 15 to Aug. 1	1882, p. 6322
Herts	Within metropolitan police district, close time for all birds from Feb. 15 to Aug. 15	1896, p. 720
	Without metropolitan police district to commence on Feb. 1 and end on Aug. 31	1892, p. 4010
Hunts	Close time for all birds Mar. 15 to Aug. 31, both dates inclusive	1882, p. 6321
Isle of Ely	Same as Hunts.	
Kent	Close time for all birds except wild duck, Mar. 1 to Aug. 12	1896, Mar. 11
Lincs.	Close time for all birds from Mar. 15 up to and inclusive of Aug. 31	1881, pp. 549, 4084
London	Close time for all birds from Feb. 1 to Aug. 31	1896, p. 1038

		London Gazette.
Middlesex	Close time for all birds commences on Feb. 1 and ends on Aug. 31	1890, p. 2971
Northants	Close time heron Mar. 1 to Sept. 1	1896, Jan. 15
	And as to the liberty of Peterborough, close time for all birds from Mar. 15 to Aug. 31, both inclusive	1882, p. 6322
Northumberland	Close time for all birds Mar. 1 to Aug. 11	1884, p. 3273
	Except dotterel, eider duck, guillemot, gulls (except black-backed gull), kittiwake, oyster catcher, puffin, razorbill, sea parrot, sea swallow, and tern, the close time for which is from Mar. 1 to Aug. 31	1890, p. 4048
Wight, Isle of	Close time for birds included in the schedule (and see order Mar. 1896, including other birds in schedule), and also for the peregrine falcon, raven, kestrel, heron, red-backed shrike, whimbrel, spotted flycatcher, sedge, wood and garden warblers, missel thrush, common, reed, cirl buntings, wheatear, chiffchaff, gold-crested wren, yellow and pied wag-tails, wryneck, swallow, martin (2), swift, from Feb. 15 to Aug. 31	1896, p. 2030
Yorks, N. Riding	Close time for all birds to be from Mar. 1 to Aug. 11	1893, p. 948
E. Riding	Close time for all birds to be from Mar. 1 to Aug. 15	1895, p. 2779
W. Riding	Close time for all birds to be from Mar. 1 to Aug. 11	*Field*, May 9, 1896.

The extent of the Act.—Sect. 9 provides—

The operation of this Act shall not extend to the Island of Saint Kilda, and it shall be lawful for one of her Majesty's principal Secretaries of State as to Great Britain, and for the Lord Lieutenant as to Ireland, where it shall appear desirable, from time to time, upon the application of the justices in quarter sessions assembled in any county, to exempt any such county or part or parts thereof, as to all or any wild birds, from the operation of this Act; and every such order shall be published and may be proved in the manner provided in the preceding section.

The powers of the justices are transferred to the county council, who will now make application. (Local Government Act, 1888, s. 3.)

In accordance with this provision an order has been made with regard to the Exe fishery district of the county of Devon as to cormorants and shags: *London Gazette*, 1884, p. 2440.

SCHEDULE.

American quail.
Auk.
Avocet.
Bee-eater.
Bittern.
Bonxie.
Colin.
Cornish chough.
Coulterneb.
Cuckoo.
Curlew.
Diver.
Dotterel.
Dunbird.
Dunlin.
Eider duck.
Fern-owl.
Fulmar.
Gannet.
Goatsucker.
Godwit.
Goldfinch.
Grebe.
Greenshank.
Guillemot.
Gull (except Black-backed gull).
Hoopoe.
Kingfisher.
Kittiwake.
Lapwing.
Lark (44 & 45 Vict. c. 51, s. 2).
Loon.
Mallard.
Marrot.
Merganser.
Murre.
Night-hawk.
Night-jar.
Nightingale.
Oriole.
Owl.
Ox Bird.
Oyster catcher.
Peewit.
Petrel.
Phalarope.
Plover.
Ploverspage.
Pochard.
Puffin.
Purre.
Razorbill.
Redshank.
Reeve or Ruff.
Roller.
Sanderling.
Sandpiper.
Scout.
Sealark.
Seamew.
Sea parrot.
Sea swallow.
Shearwater.
Shelldrake.
Shoveller.
Skua.
Smew.
Snipe.
Solan goose.
Spoonbill.
Stint.
Stone curlew.
Stonehatch.
Summer snipe.
Tarrock.
Teal.
Tern.
Thickknee.
Tystey.
Whaup.
Whimbrel.
Widgeon.
Wild duck.
Willock.
Woodcock.
Woodpecker.

Adding birds to schedule in a particular county.—The Wild Birds Protection Act, 1894, s. 3, which is to be read as one with the Act of 1880 (s. 1), provides—

A Secretary of State may, on the representation of the council of any administrative county, order that the principal Act shall apply within that county or any part or parts thereof to any species of wild bird not included in the schedule of that Act, as if that species of wild bird were included in the schedule of that Act, and on the making of such order that Act shall apply accordingly.

Orders under this section are to be publicly notified in the manner set out in the Wild Birds Protection Act, 1894, s. 4, by the county council for the county to which the order applies. (See below, p. 246.)

The following orders have been made up to and including the month of March, 1896, but the list is not guaranteed to be complete. The lists of birds mentioned in the orders are so extensive that it has been found impossible to set them out at length :—

	London Gazette.
Bedfordshire	Feb., 1896.
Bucks	March, 1896.
Cheshire	July, 1895.
Devon	Nov., 1895.
Essex (within the Met. Pol. Dist.)	Feb., 1896.
Herts (within and without Met. Pol. Dist.)	Feb., 1896.
Hunts	June, 1895.
Kent	March, 1896
Lincolnshire	May, 1895.
London	Feb., 1896.
Middlesex	Jan., 1896.

	London Gazette.
Norfolk	April, 1895.
Northants	Jan., 1896.
Pembroke	March, 1896.
Somerset	July, 1895.
Suffolk (*West*)	Feb., 1896.
Stafford	Nov., 1895.
Wilts	Sept., 1895.
Wight (*Isle of*)	March, 1896.

Taking and destruction of wild birds' eggs.—The Wild Birds Protection Act, 1894 (57 & 58 Vict. c. 24), provides as follows:—

Sect. 1. This Act may for all purposes be cited as the Wild Birds Protection Act, 1894, and shall be construed as one with the Wild Birds Protection Act, 1880 (hereinafter referred to as "the principal Act"), except as hereinafter provided.

Sect. 2. A Secretary of State may, after the passing of this Act, upon application by the county council of any administrative county by order prohibit—

(1.) The taking or destroying of wild birds eggs in any year or years in any place or places within that county; or

(2.) The taking or destroying the eggs of any specified kind of wild birds within that county or part or parts thereof, as recommended by the said county council and set forth in the said order.

(3.) The application by the county council shall specify the limits of the place or places, or otherwise, the particular species of wild birds to which it is proposed that any prohibition in the order is to apply, and shall set forth the reasons on account of which the application is made.

The following orders have been made under this Act up to and including March, 1896. The list is not guaranteed to be absolutely complete; the lists of birds is too lengthy to be set out here, and the reader is referred to the terms of the various orders :—

	London Gazette.
Bedfordshire	Feb., 1896.
Cambridgeshire (Wicken Sedge Fen)	Sept., 1895 (3 years).
Cheshire	July, 1895.
Cornwall	Dec., 1894.
Cumberland	*Field*, May 9, 1896.
Devon	Nov., 1895.
Essex (within the Met. Pol. Dist.)	Feb., 1896.
Glamorgan	March, 1895.
Gloucestershire	Feb., 1896.
Herts (within and without Met. Pol. Dist.)	Feb., 1896.
Hunts	June, 1895.
Kent (within and without Met. Pol. Dist.)	March, 1896.
Lincolnshire (Lindsey, Kesteven)	May, 1895.
London	Feb., 1896.
Middlesex	Jan., 1896.
Norfolk	April, 1895.
Northants	Jan., 1896.
Oxfordshire	March, 1895.
Pembroke	March, 1896.
Southampton	Sept., 1895.
Suffolk (*West*)	Feb., 1896.
Suffolk (*East*), part	Dec., 1895 (3 years).
Staffordshire	Nov., 1895.
Warwick	Feb., 1896.
Westmoreland	May, 1895.
Wight (*Isle of*), as to part	March, 1896.
Yorks (E. Riding, Spurn Promontory)	April, 1895.

Publication of orders.—Sect. 4 of the Act provides—

(1.) The council of an administrative county shall in every year give public notice of any order under this Act which is in force in any place within their county during the three weeks preceding the commencement of the period of the year during which the order operates.

(2.) Public notice under this section shall be given—

(*a.*) As regards each place in which an order operates, by advertising the order in two local newspapers circulating in or near that place;

(*b.*) By fixing notices of the order in conspicuous spots within and near each place in which the order operates; and

(*c.*) In such other manner as the Secretary of State may direct, or as the council may think expedient, with a view to making the order known to the public.

The orders made for particular counties can always be seen at the local police stations,, or by searching the *London Gazette*.

It would probably be a defence to a prosecution under sect. 5 that the public notice was not given in the locality under this section, unless the defendant could be shown to have knowledge *aliunde*, but it would not be a defence to show that the order, having been published in that locality, had not been published in all the localities to which the order applied: cp. *Motteram* v. *G. E. R.*, 7 C. B. N. S. 58; 29 L. J. M. C. 57.

County Council expenses.—Sect. 6 provides—

Any expenses incurred by the council of a county under this Act may be defrayed by that council as expenses for general county purposes within the meaning of the Local Government Act, 1888.

Penalties.—Sect. 5 provides—

Any person who, after the passing of this Act, shall take or destroy, or incite any other person to take or destroy—

(*a.*) the eggs of any wild birds within any area specified in the order; or

(*b.*) the eggs of any species of wild bird named in the order, shall, on conviction before any two justices of the peace in England and Wales, forfeit and pay for every egg so taken or destroyed a sum not exceeding one pound.

The penalty is recoverable under the Summary Jurisdiction Acts by virtue of sect. 5 of the Wild Birds Protection Act, 1880, which is read with this Act. (See p. 238.)

It would appear that no person can be convicted under this section of inciting another to take eggs unless the eggs are taken. If any person takes eggs, aiders and abettors might be prosecuted under the Summary Jurisdiction Act, 1848, s. 5.

If persons trespass on land in search of eggs, as to which no order has been made in the district where such persons are in search, the only remedy is an action of trespass, unless such persons take or destroy the eggs of game, swans, wild ducks, teal, and widgeon, and thus offend against the provisions of the Game Act, 1831, s. 24. (See p. 128.)

If birds fit for food are reclaimed and kept in a mew or cage, their eggs are the subject of larceny. (See p. 251.)

CHAPTER XXI.

LARCENY OF AND MALICIOUS INJURY TO DOGS AND DOMESTIC ANIMALS.

Dogs, larceny of. — Any person who steals a dog is liable, on a first offence, to imprisonment for a period not exceeding six months, or a fine not exceeding 20*l.*, and the value of the dog, and for a subsequent offence to imprisonment not exceeding eighteen months. (24 & 25 Vict. c. 96, s. 18.) It is also an offence to be in the possession of stolen dogs (*Ibid.*, sects. 19, 22), and to corruptly take money to recover a dog which has been stolen. (Sect. 20.)

For recovery of penalties under the Larceny Act, see p. 265.

Destroying trespassing dogs.—There is nothing in the game statutes to show under what circumstances trespassing dogs or cats may be killed when hunting game, and the only mention of such a matter is made in sect. 13 of the Game Act, 1831, which enables fully appointed or deputed gamekeepers to seize dogs being used at the time to hunt game by an uncertificated person. (See p. 146.)

The owner of a legal park, chase, or warren, it is said, may shoot any dog which is used to hunt the warren, whether at the time doing mischief or not:

Wadhurst v. *Damme*, Cro. Jac. 45; *Wright* v. *Ramscot*, 1 Saund. 84; *Vere* v. *Lord Cawdor*, 11 East, 568; *Protheroe* v. *Mathews*, 5 C. & P. 581.

With regard to ordinary game-owners and their servants, there have been various cases decided. It was settled in *Deane* v. *Clayton*, 7 Taun. 489; *Jordin* v. *Crump*, 8 M. & W. 782; *Bird* v. *Holbrook*, 4 Bing. 628; and *Bryan* v. *Eaton*, 40 J. P. 213, that the owner of game preserves and gardens may fix dog spears, set lures and traps or other engines for transfixing or catching trespassing dogs, provided that the lure is not placed so near a boundary as to attract dogs off the highway, or such place as they may lawfully be at the time.

With regard, however, to dogs which are found trespassing in pursuit of game, the rule of law seems to be that in no case is any person justified in shooting them, unless that is the only manner in which he can protect the life of the game which is being pursued, and as it would be extremely difficult to prove that this could not have been done by throwing stones or some other means, it is very unadvisable to shoot. Prejudice is greatly against the shooter: see *Vere* v. *Lord Cawdor*, 11 East, 568; *Janson* v. *Brown*, 1 Camp. 41; Treatise, 33 J. P. 455; *Field* Newspaper, June 22, 1895.

The result of killing a dog unlawfully, but *bonâ fide* in defence of property, may be a civil action for damages for the loss of the dog, but not a prosecution. The Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 41, makes it an offence to maliciously kill, maim, or wound any dog, bird, beast, or other animal either the subject of larceny at common law, or ordinarily kept

in a state of confinement, or for any domestic purpose; but it has been held that to shoot or trap an animal in defence of property (and every owner has a qualified property in game: *Blades* v. *Higgs*, 34 L. J. C. P. 286) is not a malicious offence within this section, but is the subject of an action: *Daniel* v. *Janes*, 2 C. P. D. 351; 41 J. P. 712; *Bryan* v. *Eaton*, 40 J. P. 213; *Smith* v. *Williams*, 9 Times Rep. 9.

Nothing can justify a person in laying poison contrary to the provisions of the Poisoned Grain and Flesh Prohibition Acts: see "Poisons," Chap. XII.; *Daniel* v. *Janes*, *supra*; *Rogers* v. *Hull*, Times, 15 June, 1896.

Pigeons.—When shut up in a dove-cot pigeons are the subject of larceny at common law (1 Hale, P. C. 511), and this is the case also though they have access to the air through the day and merely come home to the dove-cot to roost: *R.* v. *Cheafor*, 2 Den. C. C. 361; *R.* v. *Brooks*, 4 C. & P. 131.

By 24 & 25 Vict. c. 96, s. 23, it is provided that whosoever unlawfully and wilfully kills, wounds, or takes any house dove or pigeon, under such circumstances as shall not amount to larceny at common law, shall, on conviction, be liable to a penalty of two pounds and the value of the bird. Where, however, A. gave notice to B. that, if B.'s pigeons continued to come on his land, he would shoot them, and he afterwards shot one and left it on the ground, it was held that this was not an "unlawful" killing within the meaning of the statute; it was an act *bonâ fide* done in defence of property, and was not in the nature of larceny: *Taylor* v. *Newman*, 32 L. J. M. C. 186; so also if tame fowls trespass on land and damage the crops, to kill them in

protection of property is not malicious damage (24 & 25 Vict. c. 97, s. 41; *Smith* v. *Williams*, 9 Times Rep. 9, *infra*); but both in the case of tame pigeons and tame fowls, if a person kill them, he renders himself liable to an action of damage for the loss of the birds, unless he can show he had no other means of protecting his crops than killing them: *Ibid.*

The only remedy against persons who trespass on land in pursuit of wild pigeons is an action of trespass.

Swans.—When reduced into the possession of a private person, it is said by marking, and certainly when in such persons' private waters and ponds (Archbold Crim. Pl., 21 ed. p. 371), swans are the subject of larceny at common law, but if they gain their liberty, and are found in navigable rivers or the sea, they may be seized to the king's use as a royal bird, whether marked or not. No one can have a swan mark but by grant of the king or prescription: *Case of Swans*, 7 Rep. 16. Swans' eggs are not the subject of larceny, it is said (2 Russ. Cr., 5th ed. p. 235), because a lesser punishment is imposed for taking them by the Game Act, 1831, s. 24.

Domestic animals—Larceny.—Tame animals, whether originally wild or not (see property in game, p. 12), and birds, kept for food, labour, or profit, their eggs, their produce and their young, hawks kept for sport, and wild animals kept in a state of captivity for food or profit, but not merely for curiosity, are the subject of larceny at common law: Stephen Dig., p. 251.

By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 21, it is provided that whosoever shall steal any bird, beast,

or other animal ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof, is liable on conviction before a justice to imprisonment, with or without hard labour, for six months, or forfeiture above the value of the animal of not exceeding 20*l.*, and, on a second offence, to imprisonment for twelve months; and any person, in whose possession, or on whose premises, any such bird or the plumage thereof, or such bird or the skin thereof, or such animal or any part thereof shall be found, such person knowing the same to have been stolen, is liable to the same penalties for a first or second offence as persons convicted under sect. 21. (24 & 25 Vict. c. 96, s. 22.)

For recovery of penalties under the Larceny Act, see p. 265.

The property in, and stealing of game, when wild or tame, dead or alive, is fully discussed in Chap. I., see p. 5.

Animals of a base nature.—Such animals as bears, foxes, monkeys, ferrets, and singing birds, squirrels, and parrots, are not capable of being stolen at common law, or by statute, unless they are kept in a state of confinement or for a domestic purpose under the above section.

Ferrets.—It was held in *R.* v. *Searing* (R. & R. 350), that ferrets are not capable of being stolen at common law; and Stephen, J., Criminal Law, p. 251, says, "I know not whether a ferret would fall within the words of the 21st section of the Larceny Act or not."

Rooks in a rookery are not the subject of larceny; they are *feræ naturæ: Hannam* v. *Mockett*, 2 B. & C. 934. (See p. 24.)

It is not an offence apparently to take and carry away an animal, which, though really tame, is wandering far from its habitation as if it were wild, when it is not known to be tame by the person who takes and carries it away. (1 Hawk. P. C., p. 149, c. 19, s. 40.)

Malicious injuries to domestic animals.—The 41st section of 24 & 25 Vict. c. 97, provides that, whosoever shall unlawfully and maliciously kill, maim, or wound any dog (see p. 248), bird, beast, or other animal not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement or for any domestic purpose, is liable on conviction before a justice to imprisonment, with or without hard labour, for not exceeding six months or forfeiture, over and above the amount of injury done, of not exceeding 20*l.*, and for a second conviction of any offence under the section to imprisonment with hard labour for twelve months.

If the conviction is by one justice, the imprisonment must not exceed fourteen days, and the sum adjudged to be paid must not exceed 20*s.*

An act done towards an animal, without malice, and *bonâ fide* in defence of property, is not an offence under this section. Thus, where a farmer shot a neighbour's fowls, which were continually trespassing on and consuming his seeds, after notice that he would do so, the Court quashed the conviction: *Smith* v. *Williams*, 9 Times Rep. 9. The farmer would have been liable to

an action for the loss of the fowls, unless he could have shown that he had no other means of protecting his crops, but he could have counterclaimed in the action for the damage the fowls had caused: cp. "Dogs," p. 248; *Daniel* v. *Janes*, 2 C. P. D. 351; *Bryan* v. *Eaton*, 40 J. P. 213.

CHAPTER XXII.

RECOVERY OF PENALTIES UNDER THE GAME ACT, LARCENY ACT, AND EXCISE STATUTES.

1. Under the Game Act, 1831.

THE procedure for penalties under the Game Act, 1831, was formerly regulated by sects. 37—48 of the Act. A number of the provisions contained in those sections have now been repealed by the Summary Jurisdiction Act, 1884, and the procedure of the Summary Jurisdiction Acts, 1848, 1879, 1884, is thereby substituted, and applied to the Act.

Sect. 41 of the Game Act provides that the prosecution for every offence punishable upon summary conviction by virtue of this Act, shall be commenced within three calendar months after the commission of the offence. The remainder of the section is repealed. (S. J. Act, 1884.) In computing the three calendar months the day on which the offence was committed is excluded, and the day of information included, thus, an information laid on April 1, for an offence committed on January 1, would be in time: *Radcliffe* v. *Bartholomew*, (1892) 1 Q. B. 161; 61 L. J. M. C. 63; 65 L. T. 677.

Any person, whether he have an interest in the land or not, may lay an information for an offence under

the Game Act, 1831: *Middleton* v. *Gale*, 8 A. & E. 155; *Morden* v. *Porter*, 29 L. J. M. C. 213; 1 L. T. N. S. 403. One justice may receive the information. (S. J. Act, 1848, s. 29.) The informant may lay the information in person, or by any other authorized person; it need not be in writing, but usually is: *R.* v. *Hughes*, 4 Q. B. D. 625; unless a warrant is to be issued in the first place it need not be on oath, but, if a warrant is to be issued, must be on the oath of the informant or witnesses on his behalf; lastly, it must be for one offence on one day only. (S. J. Act, 1848, s. 10.) As to alleging the commission of several offences, see *Onley* v. *Gee*, 30 L. J. M. C. 222.

A joint information against several offenders on the same occasion, an information against several persons for a joint offence, and an information against principals, together with aiders and abettors, are all good: *R.* v. *Littlechild*, L. R. 6 Q. B. 293; 40 L. J. M. C. 137; *R.* v. *Cridland*, 27 L. J. M. C. 28; *R.* v. *Staffordshire Justices*, 23 J. P. 486; *Mayhew* v. *Wardley*, 14 C. B. N. S. 550.

It will be for the justices to exercise their discretion whether they hear the cases together or separately (*Ibid.*); and, where two persons are separately summoned for an assault committed on the same person at the same time, the justices may hear the cases jointly: *In re Brighton Stipendiary*, Times, 20 June, 1893.

Aiding, abetting, counselling, or procuring are only one offence: *Ex parte Smith*, 27 L. J. M. C. 186. (S. J. Act, 1848, s. 5.)

A defendant or defendants may be charged with aiding and abetting only: *Stacey* v. *Whitehurst*, 34 L. J. M. C. 94.

Generally speaking, sex makes no difference as to criminal liability (52 & 53 Vict. c. 63, s. 1); but there is a presumption that if a woman does a wrongful act in the presence of her husband she does so under his coercion, though this presumption may be rebutted.

It is not necessary to specify the exact date of the offence; to allege it as between certain dates, the earliest of which is within three months, is sufficient: *Onley* v. *Gee*, 30 L. J. M. C. 222.

The parish and county should be specified to show that the magistrate receiving the information has jurisdiction, and in trespass and poaching cases land ought to be identified generally as being in the occupation of a person or persons.

In certain cases, also, the time of day is the essence of the offence; cp. Night Poaching Acts, Larceny Act, s. 17.

The description of any offence is sufficient in law, if it be in the words of the Act or any order, bye-law, regulation or other document creating it, or in similar words (S. J. Act, 1879, s. 39, sub-s. 1); but it has been held that the Act should be strictly followed: *R.* v. *McKenzie*, (1892) 2 Q. B. 519; 61 L. J. M. C. 181.

The justice signs the information; a summons is then issued, and may be served by a constable either on the defendant personally or at his last or most usual place of abode. (S. J. Act, 1848, s. 1; Game Act, 1831, s. 41, repealed S. J. Act, 1884.)

A warrant may be issued in the first place by the justice, if the information be substantiated on oath (*vide supra*), or if the defendant fails to appear before the Court after being duly served with the summons, or the justices may, in the latter case, proceed to hear the case

ex parte and adjudicate. (S. J. Act, 1848, ss. 1, 2.) As to the form of the warrant, see *Ibid.*, s. 3; S. J. Act, 1879, s. 37. As to backing borough and county warrants, see Mun. Corp. Act, 1882, s. 223. A warrant should not be issued if a summons will be as effectual: *O'Brien* v. *Brabner*, 49 J. P. 227.

The Game Act, 1831, s. 31, provides that trespassers arrested under that section must be brought before a justice within twelve hours, and, if that is not possible, must be discharged; and proceedings may be subsequently taken against them by summons or warrant.

By sect. 38 of the Summary Jurisdiction Act, 1879, a person who is taken into custody without a warrant is to be brought before a court of summary jurisdiction as soon as possible, and, if this cannot be done within twenty-four hours, the superintendent of police or inspector of police must discharge the prisoner on recognizances, with or without sureties, for a reasonable amount, unless the case be a serious one. (Cp. Mun. Corp. Act, 1882, s. 227.)

The provisions as to summoning witnesses are to be found in the Summary Jurisdiction Act, 1848, s. 7; *Ibid.* 1879, s. 36, substituted for Game Act, 1831, s. 40, repealed Summary Jurisdiction Act, 1884.

The constitution of the Court of Summary Jurisdiction is regulated by sect. 20 of the Summary Jurisdiction Act, 1879. (Interpretation Act, 1889, s. 13.) The justices must sit in open court (S. J. Act, 1848, s. 12), and the number of justices required to sit is prescribed by the section of the Game Act creating the offence. Where one justice hears a case a certain restriction is put on his powers. (*Ibid.* 1879, s. 20 (7).) The penalties for each offence are noted under the various offences.

If the defendant, after being duly served with a summons, do not appear, the justices may issue a warrant or proceed *ex parte:* if the informant do not appear the case may be dismissed or adjourned. (S. J. Act, 1848, s. 13.)

The defendant by his appearance waives any irregularity that could be raised to the information or summons: *R.* v. *Hughes*, 4 Q. B. D. 614; 48 L. J. M. C. 151.

As to the power of adjournment and remands, see S. J. Act, 1848, ss. 1, 3, 9, 13, 16; *Ibid.* 1879, ss. 20, 24.

The informant and defendant may each employ counsel or attorney to conduct their case. (S. J. Act, 1848, s. 12.)

The informer may also be himself examined as a witness, and may also examine and cross-examine witnesses: *Duncan* v. *Toms*, 56 L. J. M. C. 81; 56 L. T. 719; but a superintendent of police must not act as an advocate: *Webb* v. *Catchlove*, 50 J. P. 795.

The defendant cannot be examined on oath: *Cattell* v. *Ireson*, 27 L. J. M. C. 167; 14 & 15 Vict. c. 99, s. 3; but he may make a statement and call witnesses.

The course of procedure as to taking pleas, and the examination of witnesses, is given in the S. J. Act, 1848, s. 14.

Justices have a discretion as to allowing defendants to sever their defences: *R.* v. *Littlechild*, L. R. 6 Q. B. 293; 40 L. J. M. C. 137.

The defendant, if he do not admit the charge, must prove all matters of defence or exception, the Game Act, s. 42, providing—

That it shall not be necessary, in any proceeding

against any person under this Act, to negative by evidence any certificate, licence, consent, authority, or other matter of exception or defence; but that the party seeking to avail himself of any such certificate, licence, consent, authority, or other matter of exception or defence, shall be bound to prove the same.

Sect. 30 of the Game Act, 1831, provides that a person charged with trespassing in pursuit of game under that section shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law for such trespass, and the same principle applies to a prosecution under other sections.

The prosecutor need not establish *mens rea* in the defendant in cases of trespass under the game statutes, and it is no defence to show that the defendant believed himself not to be a trespasser at the time: *Watkins* v. *Major*, L. R. 10 C. P. 662; *Morden* v. *Porter*, 29 L. J. M. C. 213; *Cornwell* v. *Saunders*, 32 L. J. M. C. 6. He must show that he had reasonable grounds for such belief.

Claim of right.—A *bonâ fide* claim of title to property ousts the jurisdiction of the justices. They cannot decide the question of title against the will of the defendant.

The claim of right must be a claim of title to real property. Thus, where the tenant of lands charged the landlord's keepers with assault (24 & 25 Vict. c. 100, s. 42) in trying to take from him on his farm a bag containing rabbits, claimed as the landlord's property, it was held, that even if they had acted under a *bonâ fide* belief, that they had a right to do what they did, no title to land was in question, and the justices' jurisdiction was not ousted: *White* v. *Fox*, 49 L. J. M. C. 60; see also *Philpot* v. *Bugler*, 54 J. P. 646.

The claim of right must not only be raised *bonâ fide*, but on reasonable grounds. A mere assertion of a right is not sufficient: *Leatt* v. *Vine*, 30 L. J. M. C. 207.

Where a defendant in answer to a charge of trespass in pursuit of game claimed that he had a right to shoot rabbits on a common, and showed an honest belief in such rights, but the claim was absurd, and impossible in point of law, the justices' jurisdiction was not ousted: *Watkins* v. *Major*, L. R. 10 C. P. 662; 44 L. J. M. C. 164.

So, where a person *bonâ fide* believed he had the right to shoot over land, but there had been no valid grant of the right to him: *Brigstocke* v. *Rayner*, 40 J. P. 245.

The claim must be on behalf of the defendant, or those under whom he claims; it is not sufficient to impeach the title of the informer: *Cornwell* v. *Saunders*, 32 L. J. M. C. 6.

The justices must exercise their discretion on the merits of the claim, and the sufficiency of the evidence in support of it.

A claim to land under a lease, the plan annexed to which, the defendant alleged, through a mistake failed to show that the spot in question was included, was held not good: *Watkins* v. *Smith*, 38 L. T. 525; 42 J. P. 468; and where a keeper, who was charged with trespass on the glebe, claimed a right on the part of his master to shoot there as lessee from the lord of the manor, but no evidence was produced that the glebe was included in the lease, the claim was held insufficient: *Birnie* v. *Marshall*, 35 L. T. 373; 41 J. P. 221; see, also, *R.* v. *Critchlow*, 26 W. R. 681, to the same effect.

If, however, there is any evidence of the right, or

where doubtful questions are raised, and such right might exist, the justices should decline jurisdiction.

Thus, where a person claimed a right to shoot over certain lands, and put in documents and an inclosure act, but was convicted by the justices, who doubted his *bona fides*, the Court quashed the conviction on the ground that the justices are not conclusive judges of the defendant's *bona fides*, if there is evidence of it: *Reg.* v. *Derbyshire JJ.*, 11 W. R. 780; *R.* v. *Kayley*, 10 L. T. 339; *Lovesay* v. *Stallard*, 30 L. T. 792.

Where a tenant of land in the forest of Dartmoor claimed a right to take rabbits in the purlieu, and put in a charter of King John, and some very slight evidence of user, it was held that, though the right was doubtful, it was not certain on the evidence produced that it could not exist, and the jurisdiction of the justices was ousted: *Newcombe* v. *Fewins*, 41 J. P. 581.

For examples of such claims set up in cases of landlord and tenant, see *Pochin* v. *Smith*, 52 J. P. 5; *Penwarden* v. *Palmer*, Times Rep. 1894, 362; *Milnthorpe* v. *Adams*, 48 J. P. 264.

The remedy in all cases, where a claim of right exists, is by action at law. (See, however, sect. 46 of the Game Act, 1831, and the remarks thereon, p. 71.)

When the justices have heard the case, they will convict or dismiss the information. If they dismiss, the defendant is entitled to a certificate of dismissal (S. J. Act, 1848, s. 14), and the prosecutor may be ordered to pay the defendant such costs as are just and reasonable. (*Ibid.*, s. 18.)

If they convict, the conviction will be lodged with the clerk of the peace (*Ibid.*, s. 14), after being drawn

up in the form provided by the Summary Jurisdiction Rules, 1886. (S. J. Act, 1884, repealing Game Act, ss. 39, 43.) See *R.* v. *Hyde*, 21 L. J. M. C. 94.

The conviction must be for the offence charged, and that only: *Martin* v. *Pridgeon*, 28 L. J. M. C. 179; *Blake* v. *Beech*, 1 Ex. D. 320; but there seems no objection where a defendant has appeared to an information charging him with one offence, if it be expedient, to charge him verbally with another charge, allowing an adjournment, if necessary: *R.* v. *Hughes*, 4 Q. B. D. 625, 626; 48 L. J. M. C. 151.

Where an information is laid against several for any offence, each is liable to the full penalty on conviction: *R.* v. *Littlechild*, L. R. 6 Q. B. 293; though on a joint information each case may be separately heard in the discretion of the justices. A separate conviction should be drawn up against each prisoner: see *R.* v. *Cridland*, 27 L. J. M. C. 28, see above, p. 256.

The penalty and term of imprisonment, if any, in default, have been noted under the heading of each offence throughout this work. (See sect. 38 of the Game Act, 1831, and the S. J. Act, 1884, Sched.)

The Game Act, 1831, s. 37, provides that every penalty and forfeiture for any offence against the Act (the application of which has not already been provided for), shall be paid to some one of the overseers of the poor, or to some other officer, as the convicting justice or justices may direct, of the parish, township or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division, in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general

rate; and no inhabitant of such county, riding, or division, shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid.

By 5 & 6 Will. 4, c. 20, s. 21, half the penalty was to be paid to the informer, but this has been repealed (43 & 44 Vict. c. 19, s. 4); so the section above stands.

A defendant may in all cases be ordered to pay on conviction such costs as are just and reasonable (S. J. Act, 1848, ss. 18, 23); and where the defendant is ordered to pay a penalty with costs, he may be committed in default. (Game Act, s. 38.) Where he is ordered to be imprisoned in the first place, and pay the costs, further imprisonment in default of distress can be imposed. (S. J. Act, 1848, s. 24.) As to dismissing the information on payment of costs, see S. J. Act, 1879, s. 16.

Appeal.—Any person who shall think himself aggrieved by any summary conviction in pursuance of the Game Act, may appeal to the justices at the next quarter sessions. (Game Act, 1831, s. 44.) The remainder of the section is repealed, and the procedure on appeal as provided by the Summary Jurisdiction Act, 1879, s. 31, substituted. (See S. J. Act, 1884, s. 6, and Sched.)

Certiorari.—No summary conviction in pursuance of this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari. (Game Act, 1831, s. 45.) The remainder of the section is repealed (S. J. Act, 1884).

The provision as to certiorari does not apply, however, to cases where there has been a want of, or excess of, jurisdiction: *R.* v. *Somerset JJ.*, 5 B. & C. 816; *R.* v. *Bradlaugh*, 3 Q. B. D. 509. As to the rights of the Crown, or the prosecutor to move for a certiorari, see *R.* v. *Boultbee*, 4 A. & E. 498.

As to a case stated, see 20 & 21 Vict. c. 43, and the S. J. Act, 1879, s. 33.

Where proceedings have been instituted under the Game Act for trespass by any person, they are a bar to any proceedings by the same person for the same trespass at civil law. (Game Act, s. 46.) See p. 71, where the section is set out, and discussed.

The Game Act, sect. 47, which afforded protection to persons sued or prosecuted for anything done in intended pursuance of the Act, is now repealed and replaced by the Public Authorities Protection Act, 1893. (See p. 270.)

2. Under the Larceny Act, 1861.

The procedure is regulated by the Summary Jurisdiction Acts, 1848, 1879 (Larceny Act, s. 120; S. J. Act, 1884).

As to laying an information, compare the detailed proceedings under the Game Act, 1831, p. 255.

The information must be laid within six months from the time when the matter of it arose. (S. J. Act, 1848, s. 11.) The method of compelling the attendance of persons charged is now regulated by the Summary Jurisdiction Act, 1848 (Larceny Act, s. 105, repealed by S. J. Act, 1884).

The hearing of a charge before justices, bail, adjournment, and other kindred matters, are dealt with pp. 256 *et seq.*

In the case of a first conviction under the Larceny Act, the justice may, if he think fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages, or costs, or either of them, as shall be ascertained by the justices. (Sect. 108.) See also the Probation of First Offenders Act, 1887 (50 & 51 Vict. c. 25).

In case any person convicted of any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid, together with costs under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment awarded in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings in the same cause. (Sect. 109.)

In all cases where the sum adjudged to be paid on any summary conviction shall exceed 5*l.*, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person, who shall think himself aggrieved by any such conviction, may appeal to the next Court of general or quarter sessions. (Sect. 110.)

The remainder of the section is repealed (S. J. Act, 1884), and replaced by Summary Jurisdiction Act, 1879, s. 32, as amended by Summary Jurisdiction Act, 1884, s. 6, and the procedure on appeal will be found in those sections.

The penalty goes to the treasurer of the county: sect. 106. Aiders and abettors are liable to the same penalties as principals: sect. 99; cp. S. J. Act, 1848, s. 5. As to prosecution of joint offenders, see p. 256.

Where several offenders on conviction are each ordered to pay a sum equivalent to the injury or the value of the property, no further sum goes to the party injured than such amount or value; the remainder goes to the treasurer of the county. (Sect. 106.)

Convictions are not to be quashed for want of form, and no certiorari is allowed: sect. 111; as to this, see p. 264. The remainder of the section is repealed: S. J. Act, 1884; as also are sects. 112 and 113: *Ibid.*

In substitution for the provisions contained in sect. 113 as to protection against action for any act done in intended execution of the Larceny Act, 1861, *e. g.*, arrest of offenders, the provisions of the Public Authorities Protection Act, 1893, now apply: see p. 270.

Where the sections with regard to procedure in the Larceny Act are repealed by the Summary Jurisdiction Act, 1884, the procedure of the Summary Jurisdiction Acts, 1848, 1879, and 1884, is substituted. (S. J. Act, 1884, s. 5.)

Receivers of property, the stealing or taking of which is made an offence under the Larceny Act, punishable on summary conviction, are liable to the same penalties as the principal: sect. 97. As to receivers where the principal if convicted would be a misdemeanant or a felon, see sects. 91—96. As to accessories, sect. 98.

Indictable offences.—For the procedure in indictable offences, see 11 & 12 Vict. c. 42. After commitment bail is discretionary: *Ibid.*, sect. 23. For proof of

previous conviction, where the offender is a misdemeanant or felon, if he have been previously convicted summarily, see Larceny Act, s. 116.

The punishment for an indictable misdemeanour is fine or imprisonment or both, and the offender may be ordered to enter into recognizances, and find sureties to keep the peace: *Ibid.*, sect. 117.

The prosecutor's costs are allowed in misdemeanours under this Act as in cases of felony: sect. 121; 7 Geo. 4, c. 64, s. 22.

3. Under the Excise Statutes.

The Summary Jurisdiction Acts now apply to all informations, complaints, and other proceedings before a Court of summary jurisdiction under any of the statutes relating to the inland revenue, and despite any provisions contained in those statutes. (S. J. Act, 1879, ss. 51, 53.)

The Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), makes certain regulations as to the procedure in addition. The information must be laid in proceedings for the recovery of excise penalties within six months (S. J. Act, 1848, s. 3); it must be laid in the name of an officer of excise or the Attorney-General, and proceedings can only be commenced by order of the Commissioners of Inland Revenue. (53 & 54 Vict. c. 21, ss. 21 (1).) In cases, however, of immediate arrest, *e.g.*, by a constable under the Gun Licence Act, 1870, s. 9, the constable will lay the information. (*Ibid.*) In ordinary cases the summons should be served ten days before the hearing. (4 & 5 Will. 4, c. 51, s. 19.)

The supervisor, or any officer or person authorized

by the Commissioners of Inland Revenue, although he is not a barrister or solicitor, may conduct a prosecution under the Excise Acts. (53 & 54 Vict. c. 21, s. 27.)

The letter or instructions under which he has acted is sufficient evidence of his authority: *ibid.*, sect. 24; and if he has it with him he ought to produce it: *Hargreaves* v. *Hilliam*, 58 J. P. 655; though the allegation in an information that the commissioners had ordered the prosecution is sufficient proof under 7 & 8 Geo. 4, c. 53, s. 71, which is not repealed by the Act of 1890: *Dyer* v. *Tulley*, 58 J. P. 656; 63 L. J. M. C. 272.

In the case of a first offence, the justices may reduce the penalty (S. J. Act, 1879, s. 4), and the commissioners may further mitigate fines or penalties, stay or compound proceedings, or entirely remit a fine or penalty, and order an offender to be discharged from prison. (53 & 54 Vict. c. 21, s. 35.)

By sect. 9 of the Gun Licence Act, 1870, the justices have power to reduce the penalty therein mentioned to a sum not less than one quarter; on proof of a previous conviction, it cannot be reduced below a fourth under the Summary Jurisdiction Act, 1879, s. 4: *Murray* v. *Thompson*, 53 J. P. 70; 58 L. J. M. C. 41.

In default of payment of the penalty imprisonment may be awarded according to the scale in the Summary Jurisdiction Act, 1879, s. 5. The penalties, where not otherwise legally appropriated, are applied to the use of her Majesty, and must be paid to the commissioners or as they direct: 53 & 54 Vict. c. 21, s. 33.

Persons against whom any information has been exhibited may appeal to quarter sessions, and the method of appeal would, it appears, be regulated by the Summary Jurisdiction Acts. (S. J. Act, 1879, s. 31;

S. J. Act, 1884, s. 6; *R.* v. *Glamorganshire JJ.*, 53 J. P. 294.) See, however, Oke's Magisterial Synopsis, 14th ed. p. 687; 7 & 8 Geo. 4, c. 53, s. 82.

It is a doubtful matter if the justices can award costs to either party: see *R.* v. *Beadle*, 29 L. T. 76; 26 L. J. M. C. 111; though this has been done: *Lander* v. *Evans*, 45 J. P. 288; and refused: *Commissioners of Inland Revenue* v. *Goodfellow*, 45 J. P. 588; see Oke, p. 687.

Protection against Action.

The Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), provides as follows:—

1. Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:

(*a.*) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof:

(*b.*) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client:

(*c.*) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the

plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action:

(*d.*) If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the Court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority.

As to intended execution of the Game Act, see *Cox* v. *Reid*, 18 L. J. Q. B. 216. See also *Selmes* v. *Judge*, L. R. 6 Q. B. 724.

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

(*a.*) The proceeding is to be commenced in any particular place:

(*b.*) The proceeding is to be commenced within any particular time:

(*c.*) Notice of action is to be given: or

(*d.*) The defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event: or

(*e.*) The defendant may plead the general issue.

CHAPTER XXIII.

RATING OF SPORTING RIGHTS.

WHERE sporting rights were let apart from the occupation of the land, they were formerly held not rateable. If the occupier of land held the shooting, he has always paid rates for the land and the sporting rights, as enhancing its value: *Reg.* v. *Williams*, 23 L. T. 76; but if he severed the sporting rights, no rates were paid for them. Thus, where the landlord reserved the shooting, neither he nor his tenant were rated: *Reg.* v. *Thurlstone*, 28 L. J. M. C. 106; *Hilton* v. *Bowes*, 35 L. J. M. C. 137; *Reg.* v. *Battle Union*, 36 L. J. M. C. 1; L. R. 2 Q. B. 8. But the Rating Act, 1874 (37 & 38 Vict. c. 54), now extends the provisions of the Poor Rates Acts, by sect. 3, sub-s. 2, to rights of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land.

Sporting rights now, if they go with the land, are not separately rated; but if let separately, the rates upon them must be paid as provided for by sect. 6 of the Act of 1874, which enacts—

Sect. 6 (1). Where any right of fowling, or of shooting, or of taking or killing game or rabbits, or of fishing (hereinafter referred to as a right of sporting) is severed from the occupation of the land, and is not let, and the owner of such right receives rent for the land, the said right shall not be separately valued or rated, but the gross and rateable value of the land shall be estimated

as if the said right were not severed; and in such case if the rateable value is increased by reason of its being so estimated, but not otherwise, the occupier of the land may (unless he has specifically contracted to pay such rate in the event of an increase) deduct from his rent such portion of any poor or other local rate as is paid by him in respect of such increase; and every assessment committee, on the application of the occupier, shall certify in the valuation list or otherwise the fact and amount of such increase.

The following case has been decided under this sub-section:—

Where R. was the owner of a dwelling-house and nineteen acres of land, and he leased it to the occupier, excepting out of the demise all plantations, timber, mines, &c., and also excepting all manner of game, hares, rabbits, and wild fowl, with liberty of hunting, fowling, and fishing at all times over and through the premises during the term, it was held that this reserved to R. a right of sporting severed from the land, and in respect of which R. was properly assessed under sect. 6, sub-s. 1, *supra*: *Rogers* v. *St. Germains*, 35 L. T. 332.

(2.) Where any right of sporting, when severed from the occupation of the land, is let, either the owner or the lessee thereof, according as the persons making the rate determine, may be rated as the occupier thereof.

Where K. was the lessee of the exclusive right of sporting over the M. estate, together with the mansion-house, cottages, &c., for five years (the estate consisting of 1,700 acres of land, of which 700 were woods in the lessor's hands), K. was held to be rightly assessed to the poor rate under the above sub-section, as, where the

right of sporting is let, but the land retained by the owner, either the owner or the lessee may be rated: *Kenrick* v. *Overseers of Guilsfield*, 5 C. P. D. 41; 49 L. J. M. C. 27.

(3.) Subject to the foregoing provisions of this section, the owner of any right of sporting, when severed from the occupation of the land, may be rated as the occupier thereof.

(4.) For the purposes of this section, the person who, if the right of sporting is not let, is entitled to exercise the right, or who, if the right is let, is entitled to receive the rent for the same, shall be deemed to be the owner of the right.

Plantations are now, like other land, rateable to the poor, but in the special manner set out in sect. 4 of the Rating Act, 1874. If a plantation has an enhanced value owing to the presence of game upon it, its enhanced value may be taken into account for assessment purposes, when calculations are made under sect. 4: *Eyton* v. *Mold*, 6 Q. B. D. 13; 50 L. J. M. C. 39; *Earl of Westmoreland* v. *Southwick*, 36 L. T. 108.

The net result of the above remarks is that the rights of sporting are in all cases to be considered when calculating the gross value of the land. If such rights are reserved to the landlord, the tenant pays the rate, but may, unless he has contracted to pay such rate in the event of increase, deduct it from his rent.

When rights of sporting are let separately from the land, either the person entitled to receive the rent, or the lessee of the sporting rights, may be rated according as the persons making the rate determine.

APPENDIX.

THE NIGHT POACHERS ACT, 1828.

(9 Geo. 4, c. 69.)

An Act for the more effectual prevention of persons going armed by night for the destruction of game.

Whereas an Act was passed in the fifty-seventh year of the reign of his late Majesty King George the Third [*recital of title of* 57 *Geo.* 3, *c.* 90]: and whereas the practice of going out by night for the purpose of destroying game has, nevertheless, very much increased of late years, and has, in very many instances, led to the commission of murder, and of other grievous offences; and it is expedient to repeal the said recited Act, and to make more effectual provisions than now by law exist for repressing such practice; be it enacted that the said recited Act shall be, and the same is hereby repealed, except so far as the same repeals any other Acts; and if any person shall, after the passing of this Act, by night, unlawfully take or destroy any game or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or in Scotland by bond of caution, himself in ten pounds, and two sureties in five pounds each,

Recited Act repealed.

Persons taking or destroying game by night to be committed for the first offence for three months, and kept to hard labour, and to find sureties.

or one surety in ten pounds, for his not so offending again for the space of one year next following, and in case of not finding such sureties shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found; and in case such person shall so offend a second time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or bond as aforesaid, himself in twenty pounds, and two sureties in ten pounds each, or one surety in twenty pounds, for his not so offending again for the space of two years next following, and in case of not finding such sureties shall be further imprisoned and kept to hard labour for the space of one year, unless such sureties are sooner found; and in case such person shall so offend a third time, he shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years; and, in Scotland, if any person shall so offend a first, second, or third time, he shall be liable to be punished in like manner as is hereby provided in each case. See pp. 91—98.

Second offence, six months, and kept to hard labour, and to find sureties.

Third offence, to be liable to penal servitude.

Owners or occupiers of land, lords of manors, or their servants, may apprehend offenders.

2. Where any person shall be found upon any land committing any such offences as is hereinbefore mentioned, it shall be lawful for the owner or occupier of such land, or for any person having a right or reputed right of free-warren or free-chase thereon, or for the lord of the manor, or reputed manor, wherein such land may be situate, and also for any gamekeeper or servant of any of the persons herein mentioned, or any person assisting such gamekeeper or servant, to seize and apprehend such offender upon such land, or, in case of pursuit being made, in any other place to which he may have escaped therefrom, and to deliver him as soon as may be into the custody of a peace officer, in order to his being con-

veyed before two justices of the peace; and in case such offender shall assault or offer violence with any gun, cross-bow, firearms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years [*and in Scotland likewise*]. **See pp. 100—103.**

Offenders assaulting or offering violence, guilty of misdemeanour and liable to be transported.

3. [*Repealed by the Summary Jurisdiction Act*, 1884, *and superseded by the Summary Jurisdiction Act*, 1848.]

Power to issue a warrant for the apprehension of offenders.

4. [*The prosecution for every offence punishable upon summary conviction by virtue of this Act shall be commenced within six calendar months after the commission of the offence*] and the prosecution for every offence, punishable upon indictment, or otherwise than upon summary conviction, by virtue of this Act, shall be commenced within twelve calendar months after the commission of such offence. [*The words in italics are repealed by the Summary Jurisdiction Act*, 1884. *See S. J. Act*, 1848, *s.* 12.] **See pp. 105—107.**

Limitation of time for proceedings under this Act.

5. [*Repealed by Summary Jurisdiction Act*, 1884.]

Form of conviction.

6. Any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions. [*The remainder of the section is repealed as superseded by the S. J. Act*, 1879, *s.* 3, *as amended by S. J. Act*, 1884, *s.* 6.] **See p. 106.**

Appeal to quarter sessions against a summary conviction.

7. No such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by certiorari, or otherwise, into any of his majesty's superior courts of record [*or in Scotland, &c.: the rest of the section is repealed by S. J. Act*, 1884.] **See p. 106.**

No certiorari, &c.

8. On every conviction under this Act for a first or second offence, the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city or place, wherein such offence shall have been committed, and the record of such

Convictions to be returned to the quarter sessions

and registered, and may be given in evidence.

conviction or any copy thereof shall be evidence in any prosecution to be instituted against the party thereby convicted for a second or third offence; and the clerk of the peace shall immediately on such return make or cause to be made a memorandum of such conviction in a register to be kept by him of the names and places of abode of the persons so convicted, and shall state whether such conviction be the first or second conviction of the offending party. **See p. 106.**

Persons to the number of three being armed at night entering any land for the purpose of taking game, &c., deemed guilty of a misdemeanour.

9. If any persons, to the number of three or more together, shall by night unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, crossbow, firearms, bludgeon, or any other offensive weapon, each and every of such persons shall be guilty of a misdemeanour, and being convicted thereof before the justices of gaol delivery, or of the court of great sessions of the county or place in which the offence shall be committed, shall be liable, at the discretion of the court, to be transported beyond seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned and kept to hard labour for any term not exceeding three years: [*and in Scotland likewise*]. **See p. 98.**

10, 11. [*Refer to Scotland only.*]

"Night."

12. Provided always, that for the purposes of this Act the night shall be considered, and is hereby declared to commence at, the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

"Game."

13. For the purposes of this Act the word "game" shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards.

THE GAME ACT, 1831.

(1 & 2 WILL. 4, c. 32.)

An Act to amend the Laws in England relative to Game. [5th October, 1831.]

WHEREAS it is expedient to repeal the following statutes in that part of the United Kingdom called England, relative to game, and to substitute other provisions in lieu thereof: Be it therefore enacted, that [*reciting* 13 Ric. 2, st. 1, c. 13; 22 Edw. 4, c. 6; 11 Hen. 7, c. 17; 19 Hen. 7, c. 11; 14 & 15 Hen. 8, c. 10; 25 Hen. 8, c. 11; 33 Hen. 8, c. 6; 23 Eliz. c. 10; 2 Jac. 1, c. 27; 7 Jac. 1, c. 11; 22 & 23 Chas. 2, c. 25; 4 W. & M. c. 23; 5 Anne, c. 14; 9 Anne, c. 25; 8 Geo. 1, c. 19; 10 Geo. 2, c. 32; 26 Geo. 2, c. 2; 28 Geo. 2, c. 12; 2 Geo. 3, c. 19; 13 Geo. 3, c. 55; 13 Geo. 3, c. 80; 39 Geo. 3, c. 34; 43 Geo. 3, c. 112; 48 Geo. 3, c. 93; 50 Geo. 3, c. 67; 58 Geo. 3, c. 75; 59 Geo. 3, c. 102], and all Acts continuing or perpetuating any of the Acts or parts of Acts hereinbefore referred to, so far only as relates to the continuing or perpetuating the same respectively, shall be and continue in force until and throughout the thirty-first day of October in the present year; and shall from and after that day, as to that part of the United Kingdom called England, be repealed (except so far as any of the said Acts may repeal the whole or any part of any other Acts, and except as to any offences which may have been committed against any of the said Acts before or upon the said thirty-first day, and as to any penalties which may have been incurred thereunder before or upon the said thirty-first day, which offences shall be dealt with and punished, and the penalties recovered, as if this Act had not been made, and except as to any matters done by any persons under the authority of any of the said Acts before or upon the said thirty-first day, with respect to whom every privilege and protection given by any of the said Acts shall continue in force as if this Act had not been made); and this Act shall commence and take effect (except as is herein- Commence-

ment of this Act.

after excepted) on the first day of November in the present year.

What shall be deemed game.

2. And be it enacted, that the word "game" shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards; and that the words "lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty," shall throughout this Act be deemed to include a lady of the same respectively.

Days and seasons during which game shall not be killed.

3. And be it enacted, that if any person whatsoever shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game, on a Sunday or Christmas day, such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction; and if any person whatsoever shall kill or take any partridge between the first day of February and the first day of September in any year, or any pheasant between the first day of February and the first day of October in any year, or any black game, (except in the county of Somerset or Devon, or in the New Forest in the county of Southampton,) between the tenth day of December in any year and the twentieth day of August in the succeeding year, or in the county of Somerset or Devon, or in the New Forest aforesaid, between the tenth day of December in any year and the first day of September in the succeeding year, or any grouse commonly called red game, between the tenth day of December in any year and the twelfth day of August in the succeeding year, or any bustard between the first day of March and the first day of September in any year, every such person shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so killed or taken such sum of money, not exceeding one pound, as to the said justices shall seem meet, together with the costs of the conviction; and if any person, with intent to destroy or injure any game, shall at any

Penalty for laying

time put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway, every such person shall, on conviction thereof before two justices of the peace, forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction. See pp. 138, 230.

Poison to kill game.

4. And be it enacted, that if any person licensed to deal in game by virtue of this Act as hereinafter mentioned shall buy or sell, or knowingly have in his house, shop, stall, possession, or control, any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; or if any person, not being licensed to deal in game by virtue of this Act as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid, or shall knowingly have in his house, possession, or control any bird of game (except birds of game kept in a mew or breeding place) after the expiration of forty days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; every such person shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so bought or sold, or found in his house, shop, possession, or control, such sum of money, not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction. See pp. 209, 226.

Possession of game illegal after ten days in dealers, and forty days in other persons, from the expiration of the season.

5. And be it enacted, that nothing in this Act contained shall in anywise affect or alter (except as hereinafter mentioned) any Act or Acts now in force by which any persons using any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or

This Act not to affect the existing laws respecting game certificates.

landrail, or any conies, are required to obtain and have annual game certificates; but that all persons who before the commencement of this Act were required to obtain and have such certificates shall after the commencement of this Act be required from time to time to obtain and have the like certificates; and all the powers, provisions, and penalties contained in such Act or Acts shall continue in as full force and effect as if this Act had not been made; and that all regulations and provisions contained in any Act or Acts relative to game certificates, so far as they relate to gamekeepers of manors, and to the amount of duty for game certificates to be charged upon or in respect of gamekeepers of manors in the cases specified in such Act or Acts, shall extend and apply to all gamekeepers of lands appointed under this Act as fully and effectually as if they were gamekeepers of manors, and were expressly mentioned in and charged by such Act or Acts. **See pp. 151, 166.**

Every certificated person may kill game subject to the law of trespass.

6. And be it declared and enacted, that every person who shall have obtained an annual game certificate shall be authorized to kill and take game, subject always to an action, or to such other proceedings as are hereinafter mentioned, for any trespass by him committed in search or pursuit of game: Provided always, that no game certificate on which a less duty than three pounds thirteen shillings and sixpence is chargeable under the Acts relating to game certificates shall authorize any gamekeeper to kill or take any game, or to use any dog, gun, net, or other engine or instrument for the purpose of killing or taking game, except within the limits included in his appointment as gamekeeper; but that in any case where such gamekeeper shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking game, beyond such limits as aforesaid, he may be proceeded against under this Act, or otherwise, in the same manner to all intents and purposes as if he had no game certificate whatsoever. **See pp. 151, 176.**

Proviso as to gamekeepers.

Under existing

7. And be it enacted, that in all cases where any

person shall occupy any land under any lease or agreement made previously to the passing of this Act, except in the cases hereinafter next excepted, the lessor or landlord shall have the right of entering upon such land, or of authorizing any other person or persons who shall have obtained an annual game certificate to enter upon such land, for the purpose of killing or taking the game thereon; and no person occupying any land under any lease or agreement, either for life or for years, made previously to the passing of this Act, shall have the right to kill or take the game on such land, except where the right of killing the game upon such land has been expressly granted or allowed to such person by such lease or agreement, or except where upon the original granting or renewal of such lease or agreement a fine or fines shall have been taken, or except where in the case of a term for years such lease or agreement shall have been made for a term exceeding twenty-one years. See p. 25.

Leases the landlord shall have the game, except in certain cases.

8. Provided always, and be it enacted, that nothing in this Act contained shall authorize any person seised or possessed of or holding any land to kill or take the game, or to permit any other person to kill or take the game upon such land, in any case where, by any deed, grant, lease, or any written or parole demise or contract, a right of entry upon such land for the purpose of killing or taking the game hath been or hereafter shall be reserved or retained by or given or allowed to any grantor, lessor, landlord, or other person whatsoever; nor shall anything in this Act contained defeat or diminish any reservation, exception, covenant, or agreement already contained in any private Act of Parliament, deed, or other writing relating to the game upon any land, nor in any manner prejudice the rights of any lord or owner of any forest, chase, or warren, or of any lord of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, or of any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty. See pp. 16, 19, 23, 33.

This Act not to affect any existing or future agreements respecting game, nor any rights of manor, forest, chase, or warren.

9. Provided also, and be it enacted, that nothing in this Act contained shall in any way alter or affect

This Act not to affect any

of his Majesty's forest rights, &c.

the prerogative, rights, or privileges of his Majesty, his heirs or successors, nor the powers or authorities now vested in the Commissioners of his Majesty's Woods, Forests, and Land Revenues, in or relating to any of his Majesty's forests or the boundaries thereof, nor in or relating to the appointment of any stewards, gamekeepers, or other officers of any of his Majesty's forests, parks, or chases, or of any hundred, honor, manor, or lordship, being part of the possessions and land revenues of the Crown, nor the rights, privileges, or immunities of any chief justice in eyre, or any warden, deputy warden, or lieutenant of any of his Majesty's forests, or any rangers, verderers, foresters, master-keepers, under-keepers, or other officers of or in any such forests, parks, or chases, or of any person entitled to any right or privilege under them or any of them, nor the rights or privileges of any persons holding under any grants or purchases from the Crown, nor give to any lord of any manor or manors within any forest or the boundaries thereof, nor to any other person whatsoever, any privileges, rights, or powers within any such forest, park, or chase, or the boundaries thereof, which he did not possess or to which he was not entitled before the passing of this Act, but that all the aforesaid prerogatives, immunities, privileges, rights, and powers shall remain as if this Act had not been made. **See pp. 21, 31.**

Nor to affect any cattle-gates or rights of common.

10. Provided also, and be it enacted, that nothing herein contained shall be deemed to give to any owner of cattlegates or rights of common upon or over any wastes or commons any interest or privilege which such owner was not possessed of before the passing of this Act, nor to authorize such owner of cattlegates or rights of common to pursue or kill the game found on such wastes or commons; and that nothing herein contained shall defeat or diminish the rights or privileges which any lord of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty, may, before the passing of this Act, have exercised in or over such wastes or commons; and that the

lord or steward of the Crown of every manor, lordship, or royalty, or reputed manor, lordship, or royalty, shall have the right to pursue and kill the game upon the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty, and to authorize any other person or persons who shall have obtained an annual game certificate to enter upon such wastes or commons for the purpose of pursuing and killing the game thereon. **See pp. 15, 32, 39.**

Lord of manor to have the game on the wastes.

11. And be it enacted, that where the lessor or landlord shall have reserved to himself the right of killing the game upon any land, it shall be lawful for him to authorize any other person or persons who shall have obtained an annual game certificate to enter upon such land for the purpose of pursuing and killing game thereon. **See p. 37.**

Landlord, having the game, may authorize others to kill it.

12. And be it enacted, that where the right of killing the game upon any land is by this Act given to any lessor or landlord, in exclusion of the right of the occupier of such land, or where such exclusive right hath been or shall be specially reserved by or granted to, or doth or shall belong to, the lessor, landlord, or any person whatsoever other than the occupier of such land, then and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord, or other person having the right of killing the game upon such land, such occupier shall, on conviction thereof before two justices of the peace, forfeit and pay for such pursuit such sum of money not exceeding two pounds, and for every head of game so killed or taken such sum of money not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction. **See pp. 34 et sqq.**

Where the landlord, &c. has the right to the game, in exclusion of the occupier, the occupier shall be liable to a penalty for killing it.

13. And be it enacted, that it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty, by writing under hand and seal, or in case of a body corporate, then under the seal

Lords of manors may appoint gamekeepers.

of such body corporate, to appoint one or more person or persons as a gamekeeper or gamekeepers to preserve or kill the game within the limits of such manor, lordship, or royalty, or reputed manor, lordship, or royalty, for the use of such lord or steward thereof, and to authorize such gamekeeper or gamekeepers within the said limits to seize and take for the use of such lord or steward all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used within the said limits by any person not authorized to kill game for want of a game certificate. **See pp. 144—148.**

Powers of gamekeepers in manors.

Lords of manors may grant deputations.

14. And be it enacted, that it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to his Majesty, to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, to be a gamekeeper for any such manor, lordship, or royalty, or reputed manor, lordship, or royalty, or for such division or district of such manor, lordship, or royalty, as such lord or steward of the Crown shall think fit, and to authorize such person, as gamekeeper, to kill game within the same for his own use or for the use of any other person or persons who may be specified in such appointment or deputation, and also to give to such person all such powers and authorities as may by virtue of this Act be given to any gamekeeper of a manor; and no person so appointed gamekeeper, and empowered to kill game for his own use or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or steward of the Crown of the manor, lordship, or royalty, or reputed manor, lordship, or royalty, for which such deputation or appointment shall be given, shall be deemed to be or shall be entered or paid for as the gamekeeper or male servant of the lord or steward making such appointment or deputation, anything in any Act or Acts contained to the contrary notwithstanding. **See p. 148.**

Regulations respecting appointment of gamekeepers in Wales.

15. And be it enacted, that it shall be lawful for every person who shall be entitled to kill the game upon any lands in Wales of the clear annual value of five hundred pounds, whereof he shall be seised in fee or as of freehold, or to which he shall otherwise be beneficially entitled in his own right, if such lands shall not be within the bounds of any manor, lordship, or royalty, or if, being within the same, they shall have been enfranchised or alienated therefrom, to appoint, by writing under his hand and seal, a gamekeeper or gamekeepers to preserve or kill the game over and upon such his lands, and also over and upon the lands in Wales of any other person, who, being entitled to kill the game upon such last-mentioned lands, shall by licence in writing authorize him to appoint a gamekeeper or gamekeepers to preserve or kill the game thereupon, such last-mentioned lands not being within the bounds of any manor, lordship, or royalty, or having been enfranchised or alienated therefrom; and it shall be lawful for the person so appointing a gamekeeper or gamekeepers to authorize him or them to seize and take, for the use of the person so appointing, upon the lands of which he or they shall be appointed gamekeeper or gamekeepers, all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used upon the said lands by any person not authorized to kill game for want of a game certificate. **See p. 149.**

All appointments of gamekeepers to be registered with the clerk of the peace.

16. Provided always, and be it enacted, that no appointment or deputation of any person as a gamekeeper by virtue of this Act shall be valid unless and until it shall be registered with the clerk of the peace for the county, riding, division, liberty, franchise, city, or town wherein the manor, lordship, or royalty, or reputed manor, lordship, or royalty, or the lands, shall be situate, for or in respect of which such person shall have been appointed gamekeeper; and in case the appointment of any person as gamekeeper shall expire or be revoked, by dismissal or otherwise, all powers and authorities given to him by virtue of this Act shall immediately cease and determine. **See p. 150.**

Certificated persons may sell game to licensed dealers.

Proviso as to gamekeepers.

17. And be it enacted, that every person who shall have obtained an annual game certificate shall have power to sell game to any person licensed to deal in game, according to the provisions hereinafter mentioned: Provided always, that no game certificate on which a less duty than three pounds thirteen shillings and sixpence is chargeable under the Acts relating to game certificates shall authorize any gamekeeper to sell any game, except on the account and with the written authority of the master whose gamekeeper he is; but that any such gamekeeper selling any game not on the account and with the written authority of such master may be proceeded against under this Act in the same manner, to all intents and purposes, as if he had no game certificate whatsoever. **See pp. 221—224.**

Justices to hold a special session yearly for granting licences to persons to deal in game.

18. And be it enacted, that the justices of the peace of every county, riding, division, liberty, franchise, city, or town shall hold a special session in the division or district for which they usually act, in the present year, between the fifteenth and the thirtieth days of October, and in every succeeding year in the month of July, for the purpose of granting licences to deal in game, of the holding of which session seven days' notice shall be given to each of the justices acting for such division or district; and the majority of the justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorized (if they shall think fit) to grant, under their hands, to any person being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail coach, or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a licence according to the form in the Schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this

Act, and also to sell the same at one house, shop, or stall only, kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep, a board having thereon in clear and legible characters his christian name and surname, together with the following words, (that is to say,) "Licensed to deal in Game;" and every such licence granted in the present year shall begin to be in force on the first day of November in the present year, and shall continue in force until the fifteenth day of July one thousand eight hundred and thirty-two, and every such licence granted in any succeeding year shall continue in force for the period of one year next after the granting thereof. See pp. 200—202, 204.

Dealers in game to put up a board.

19. [*This section is repealed by* 23 & 24 *Vict. c.* 90, *s.* 1.] See p. 166.

20. [*This section is repealed by* 23 & 24 *Vict. c.* 90, *s.* 1.] See p. 166.

Persons licensed to deal in game must take out a certificate, with a duty of 2*l.*

21. Provided always, and be it enacted, that persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged by virtue of this Act to take out more than one licence in any one year to authorize them to deal in game at such house, shop, or stall. See p. 205.

Collectors to make out list of persons who have obtained licences to deal in game.

Proviso as to partners.

22. And be it enacted, that if any person licensed by virtue of this Act to deal in game shall during the period of such licence be convicted of any offence whatever against this Act, such licence shall thereupon become null and void. See p. 214.

Licences when to become void.

23. And be it enacted, that if any person shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of searching for or killing or taking game, such person not being authorized so to do for want of a game certificate, he shall, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction: Provided always, that no person

Penalty for killing game without a certificate.

This penalty to

be cumulative.

so convicted shall by reason thereof be exempted from any penalty or liability under any statute or statutes relating to game certificates, but that the penalty imposed by this Act shall be deemed to be a cumulative penalty. See p. 124.

Penalty for destroying or taking the eggs of game, &c.

24. And be it enacted, that if any person not having the right of killing the game upon any land, nor having permission from the person having such right, shall wilfully take out of the nest or destroy in the nest upon such land the eggs of any bird of game, or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his house, shop, possession, or control any such eggs so taken, every such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every egg so taken or destroyed, or so found in his house, shop, possession, or control, such sum of money, not exceeding five shillings, as to the said justices shall seem meet, together with the costs of the conviction. See p. 128.

Penalty for selling game without licence, and on certificated persons selling to unlicensed persons.

25. And be it enacted, that if any person not having obtained a game certificate (except such person be licensed to deal in game according to this Act) shall sell or offer for sale any game to any person whatsoever; or if any person authorized to sell game under this Act by virtue of a game certificate shall sell or offer for sale any game to any person whatsoever, except a person licensed to deal in game according to this Act; every such offender shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so sold or offered for sale such sum of money, not exceeding two pounds, as to the said justices shall seem meet, together with the costs of the conviction. See p. 221.

Exceptions as to innkeepers.

26. Provided always, and be it further enacted, that it shall be lawful for any innkeeper or tavernkeeper, without any such licence for dealing in game as aforesaid, to sell game for consumption in his own house, such game having been procured from some person licensed to deal in game by virtue of this Act, and not otherwise. See p. 205.

Penalty on persons

27. And be it enacted, that if any person, not being licensed to deal in game according to this Act, shall

buy any game from any person whatsoever, except from a person licensed to deal in game according to this Act, or *bonâ fide* from a person affixing to the outside of the front of his house, shop, or stall, a board purporting to be the board of a person licensed to deal in game, every such offender shall, on conviction thereof before two justices of the peace, forfeit and pay for every head of game so bought such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction. **See p. 225.**

buying game, except from licensed dealers.

28. And be it enacted, that if any person being licensed to deal in game according to this Act shall buy or obtain any game from any person not authorized to sell game for want of a game certificate, or for want of a licence to deal in game; or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop, or stall, without such board as aforesaid being affixed to some part of the outside of the front of such house, shop, or stall, at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game, at any place other than his house, shop, or stall where such board shall have been affixed; or if any person not being licensed to deal in game according to this Act shall assume or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game; every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction. **See pp. 205, 228.**

Penalty on licensed dealers buying game from uncertificated persons, or otherwise offending.

29. Provided always, and be it enacted, that the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in every case where the same would have been lawful if transacted by such licensed dealer

As to buying and selling game by the servants of a licensed dealer.

himself: Provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game.

See p. 212.

Penalty on persons trespassing in the day-time upon lands in search of game.

30. And whereas, after the commencement of this Act, game will become an article which may be legally bought and sold, and it is therefore just and reasonable to provide some more summary means than now by law exist for protecting the same from trespassers; be it therefore enacted, that if any person whatsoever shall commit any trespass by entering or being, in the day-time, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, such person shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding two pounds, as to the justice shall seem meet, together with the costs of the conviction; and that if any persons to the number of five or more together shall commit any trespass, by entering or being, in the day-time, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, each of such persons shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the said justice shall seem meet, together with the costs of the conviction: provided always, that any person charged with any such trespass shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law for such trespass; save and except that the leave and licence of the occupier of the land so trespassed upon shall not be a sufficient defence in any case where the landlord, lessor, or other person shall have the right of killing the game upon such land by virtue of any reservation or otherwise, as hereinbefore mentioned; but such landlord, lessor, or other person shall, for the purpose of prosecuting for each of the two offences herein last before mentioned, be deemed to be the legal occupier of such land, whenever the actual occupier thereof shall have given such leave or licence; and that the lord or steward of the crown of

Where the occupier of the land, not being entitled to the game, allows any person to kill it, the party entitled to the game may enforce the penalty.

any manor, lordship, or royalty, or reputed manor, lordship, or royalty, shall be deemed to be the legal occupier of the land of the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty. See pp. 73 et seq.

Trespassers in search of game may be required to quit the land, and to tell their names and abodes, and in case of refusal may be arrested.

31. And be it enacted, that where any person shall be found on any land, or upon any of his Majesty's forests, parks, chases, or warrens, in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the right of killing the game upon such land, by virtue of any reservation or otherwise as hereinbefore mentioned, or for the occupier of the land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any person authorized by either of them, or for the warden, ranger, verderer, forester, master-keeper, underkeeper, or other officer of such forest, park, chase, or warren, to require the person so found forthwith to quit the land whereon he shall be so found, and also to tell his christian name, surname, and place of abode; and in case such person shall, after being so required, offend by refusing to tell his real name or place of abode, or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery, or by wilfully continuing or returning upon the land, it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him or cause him to be conveyed as soon as conveniently may be before a justice of the peace; and such offender (whether so apprehended or not), upon being convicted of any such offence before a justice of the peace, shall forfeit and pay such sum of money, not exceeding five pounds, as to the convicting justice shall seem meet, together with the costs of the conviction: Provided always, that no person so apprehended shall, on any pretence whatsoever, be detained for a longer period than twelve hours from the time of his apprehension, until he shall be brought before some justice of the peace; and that if he cannot, on account of the

Penalty.

Party arrested must be discharged, unless brought

before a justice within twelve hours.

absence or distance of the residence of any such justice of the peace, or owing to any other reasonable cause, be brought before a justice of the peace within such twelve hours as aforesaid, then the person so apprehended shall be discharged, but may nevertheless be proceeded against for his offence by summons or warrant, according to the provisions hereinafter mentioned, as if no such apprehension had taken place. See p. 84.

Penalty on persons found armed using violence, &c.

32. And be it enacted, that where any persons, to the number of five or more together, shall be found on any land, or in any of his majesty's forests, parks, chases, or warrens, in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, any of such persons being then and there armed with a gun, and such persons or any of them shall then and there, by violence, intimidation, or menace, prevent or endeavour to prevent any person authorized as hereinbefore mentioned from approaching such persons so found, or any of them, for the purpose of requiring them or any of them to quit the land whereon they shall be so found, or to tell their or his christian name, surname, or place of abode respectively, as hereinbefore mentioned, every person so offending by such violence, intimidation, or menace as aforesaid, and every person then and there aiding or abetting such offender, shall, upon being convicted thereof before two justices of the peace, forfeit and pay for every such offence such penalty, not exceeding five pounds, as to the convicting justices shall seem meet, together with the costs of the conviction; which said penalty shall be in addition to and independent of any other penalty to which any such person may be liable for any other offence against this Act. See p. 88.

Penalty for trespass in day-time in his Majesty's forests.

33. And be it enacted, that if any person whatsoever shall commit any trespass, by entering or being, in the day-time, upon any of his majesty's forests, parks, chases, or warrens, in search or pursuit of game, without being first duly authorized so to do, such person shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding two pounds, as to the justice

shall seem meet, together with the costs of the conviction. See p. 82.

What to be deemed day-time.

34. And be it enacted, that for the purposes of this Act the day-time shall be deemed to commence at the beginning of the last hour before sunrise, and to conclude at the expiration of the first hour after sunset.

The provisions as to trespassers not to apply to persons hunting, &c.

35. Provided always, and be it enacted, that the aforesaid provisions against trespassers and persons found on any land shall not extend to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare, or fox already started upon any other land, nor to any person *bonâ fide* claiming and exercising any right or reputed right of free warren or free chase, nor to any gamekeeper lawfully appointed within the limits of any free warren or free chase, nor to any lord or any steward of the crown of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, nor to any gamekeeper lawfully appointed by such lord or steward within the limits of such manor, lordship, or royalty, or reputed manor, lordship, or royalty. See p. 82.

Game may be taken from trespassers not delivering up the same when demanded.

36. And be it enacted, that when any person shall be found by day or by night upon any land, or in any of his Majesty's forests, parks, chases, or warrens, in search or pursuit of game, and shall then and there have in his possession any game which shall appear to have been recently killed, it shall be lawful for any person having the right of killing the game upon such land, by virtue of any reservation or otherwise, as hereinbefore mentioned, or for the occupier of such land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any officer as aforesaid of such forest, park, chase, or warren, or for any person acting by the order and in aid of any of the said several persons, to demand from the person so found such game in his possession, and in case such person shall not immediately deliver up such game, to seize and take the same from him, for the use of the person entitled to

the game upon such land, forest, park, chase, or warren. See pp. 89, 103.

Application of penalties for offences against this Act.

37. And be it enacted, that every penalty and forfeiture for any offence against this Act (the application of which has not been already provided for) shall be paid to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid. See p. 263.

Time for payment of penalties, and scale of imprisonment for nonpayment.

38. And be it enacted, that the justice or justices of the peace by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this Act, together with costs, may adjudge that such person shall pay the same either immediately or within such period as the said justice or justices shall think fit, and that in default of payment at the time appointed such person shall be imprisoned in the common gaol or house of correction (with or without hard labour), as to the justice or justices shall seem meet, for any term not exceeding two calendar months, where the amount to be paid, exclusive of costs, shall not amount to five pounds.

[*The remainder of the section is repealed: S. J. Act*, 1884: *Where the amount is five pounds or more, see S. J. Act*, 1879, *s.* 5.] See p. 264.

Form of conviction.

Power to summon witnesses.

39. [*Repealed: S. J. Act*, 1884.] See p. 263.

40. [*Repealed: S. J. Act*, 1884.] See p. 258.

Penalty for disobedience of summons.

Time for proceed-

41. And be it enacted, that the prosecution for every offence punishable upon summary conviction by virtue of this Act shall be commenced within three calendar months after the commission of the

offence. [*The remainder of this section is repealed: Summary Jurisdiction Act*, 1884.] **See pp. 255, 257.**

ings and mode of enforcing the appearance of offenders.

42. And be it declared and enacted, that it shall not be necessary, in any proceeding against any person under this Act, to negative by evidence any certificate, licence, consent, authority, or other matter of exception or defence; but that the party seeking to avail himself of any such certificate, licence, consent, authority, or other matter of exception or defence, shall be bound to prove the same. **See p. 259.**

Prosecutor not required to prove a negative.

Convictions to be returned to sessions.

43. [*Repealed: Summary Jurisdiction Act*, 1884.] **See p. 263.**

Appeal.

44. And be it enacted, that any person who shall think himself aggrieved by any summary conviction in pursuance of this Act may appeal to the justices at the next general or quarter sessions of the peace. [*The remainder of this section is repealed: Summary Jurisdiction Act*, 1884, *as having been replaced by Summary Jurisdiction Act*, 1879, *s.* 31, *as amended by Summary Jurisdiction Act*, 1884, *s.* 6.] **See p. 264.**

No certiorari, &c.

45. And be it enacted, that no summary conviction in pursuance of this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of his Majesty's superior courts of record. [*The remainder of the section is repealed*: *Summary Jurisdiction Act*, 1884.] **See p. 264.**

This Act not to preclude actions for trespass, but no double proceedings for the same trespass.

46. Provided always, and be it enacted, that nothing in this Act contained shall prevent any person from proceeding by way of civil action to recover damages in respect of any trespass upon his land, whether committed in pursuit of game or otherwise, save and except that where any proceedings shall have been instituted under the provisions of this act against any person for or in respect of any trespass, no action at law shall be maintainable for the same trespass by any person at whose instance or with whose concurrence or assent such proceedings shall have been instituted, but that such proceedings shall in such case be a bar to any such action, and

may be given in evidence under the general issue. See p. 71.

Venue, &c. in proceedings against persons acting under this Act.

47. [*Repealed and replaced by the Public Authorities Protection Act*, 1893.] See p. 270.

Act not to extend to Scotland or Ireland.

48. And be it enacted, that nothing in this Act contained shall extend to Scotland or Ireland.

SCHEDULES.

SCHEDULE (A.).

Form of Licence.

At a special session of the justices of the peace of the county of [*or* riding, *&c.*, *as the case may be*], acting for the division of [*or otherwise*, *as the case may be*] in the said county, holden at in the said on the day of in the year We being justices acting for the said assembled at the said special session, do hereby authorize and empower A. B. of [*here insert the name, description, and place of residence, and, if more than one in partnership, say*, C. D. of, *&c.* and E. F. of, *&c.* being partners,] being a householder [*or* householders], [*or* keeper (*or* keepers) of a shop or stall, *as the case may be*], to buy game from any person authorized to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game;" and we do also authorize and empower the said A. B. [*or* C. D. and E. F. being partners] to sell at his [*or* their] house [shop *or* stall] any game so bought, provided that the said A. B. [*or* C. D. and E. F. being partners] shall affix to some part of the outside of the front of his [*or* their] house [shop *or* stall], and shall there keep, a board having thereon in clear and legible characters his christian name and surname, [*or* their christian names and sur-

names,] together with the following words, "licensed to deal in game."

This licence will expire on

(Signed) Justice of the Peace.
Justice of the Peace.

See pp. 203, 204.

SCHEDULE (B.).

(*Repealed Statute Law Revision Act*, 1874.)

It contained a form of excise certificate to be granted to licensed dealers in game: see now 23 & 24 Vict. c. 90, ss. 14, 15, 16.

THE NIGHT POACHING ACT, 1844.

(7 & 8 VICT. C. 29.)

An Act to extend an Act of the ninth year of King George the Fourth, for the more effectual prevention of persons going armed by night for the destruction of game. [4th July, 1844.]

WHEREAS an Act was passed in the ninth year of the reign of His Majesty King George the Fourth, intituled an Act for the more effectual prevention of persons going armed by night for the destruction of game, whereby it is enacted, that if any person shall, after the passing of the said Act, by night, unlawfully take or destroy any game or rabbits in any land, whether open or inclosed, such offender should, upon conviction thereof before two justices of the peace be liable to be punished and to find security for good behaviour, as in the said Act specified; and it was further thereby enacted, that if any person should be found upon any land committing any such offence as is hereinbefore mentioned such person might be seized and apprehended, and committed to custody, and in case of any assault or violence

9 Geo. 4, c. 69.

should be punished as in the said Act is set forth: And whereas the provisions of the said Act have of late years been evaded and defeated, by the destruction, by armed persons at night, of game or rabbits, not upon open or inclosed lands, as described in the said Act, but upon public roads and highways, and other roads and paths leading through such lands, and also at the gates, outlets, and openings between such lands and roads, highways, and paths, so that not only has the destruction of game or rabbits not been prevented but the risk of murder and other grievous offences contemplated by the said Act has been increased, and great danger and alarm occasioned to persons using such roads, highways, and paths; and it is expedient that the remedies provided by the said Act against such offences as hereinbefore mentioned should be extended and applied to the like offences committed upon such roads, highways, and paths: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act all the pains, punishments, and forfeitures imposed by the said Act upon persons by night unlawfully taking or destroying any game or rabbits in any land, open or inclosed, as therein set forth, shall be applicable to and imposed upon any person by night unlawfully taking or destroying any game or rabbits on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such land into any such public road, highway, or path in the like manner as upon any such land, open or inclosed; and it shall be lawful for the owner or occupier of any land adjoining either side of that part of such road, highway, or path where the offender shall be, and the gamekeeper or servant of such owner or occupier, and any person assisting such gamekeeper or servant, and for all the persons authorized by the said Act to apprehend any offender against the provisions thereof, to seize and apprehend any person offending against the said Act or this

Punishments and forfeitures imposed by the recited Act on persons by night destroying game or rabbits in any open or inclosed land to apply to persons by night destroying game or rabbits on any public road, &c.

Act and the said Act, and all the powers, provisions, authorities, and jurisdictions therein or thereby contained or given shall be as applicable for carrying this Act into execution as if the same had been herein specially set forth. See p. 92.

THE GAME LICENCE ACT, 1860.

(23 & 24 VICT. C. 90.)

An Act to repeal the duties on game certificates and certificates to deal in game, and to impose in lieu thereof duties on excise licences and certificates for the like purposes. [13th August, 1860.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act the respective duties of assessed taxes now payable under the several Acts of Parliament in that behalf in respect of certificates to kill game in Great Britain and to deal in game in England, and all the provisions, rules, and directions for assessing, charging, and collecting any of the said duties contained in Schedule (L.) of the Act passed in the fifty-second year of King George the Third, chapter ninety-three, and also the duties now payable in Ireland under the Act passed in the fifty-sixth year of King George the Third, chapter fifty-six, in respect of every certificate of having registered a deputation as a gamekeeper, and in respect of every certificate to authorize any person, not being a gamekeeper, to kill game in Ireland, and also the nineteenth and twentieth sections of the Act passed in the first and second years of King William the Fourth, chapter thirty-two, shall respectively cease and determine, and the same are hereby repealed, except as to any

After passing of this Act the duties in respect of certificates to kill and deal in game as contained in 52 Geo. 3, c. 93. Sched. (L.) 56 Geo. 3, c. 56, and 1 & 2 Will. 4, c. 32, repealed.

arrears of the said duties respectively, and as to any penalties incurred before the commencement of this Act. **See p. 165.**

In lieu of duties repealed, the duties herein named to be levied.

2. In lieu of the duties hereby repealed there shall be granted, charged, and paid for and upon the several licences and certificates to take or kill game, and licences to deal in game, hereinafter mentioned, the respective duties or sums of money hereinafter expressed or denoted; (that is to say,)

	£	s.	d.
For a licence in Great Britain or a certificate in Ireland to be taken out by every person who shall use any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or any deer, or shall take or kill by any means whatever or shall assist in any manner in the taking or killing by any means whatever of any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer:			
If such licence or certificate shall be taken out after the fifth day of April and before the first day of November,			
To expire on the fifth day of April in the following year	3	0	0
To expire on the thirty-first day of October in the same year in which the licence or certificate shall be taken out	2	0	0
If such licence or certificate shall be taken out on or after the first day of November,			
To expire on the fifth day of April following	2	0	0

Provided always, that any person having the right to kill game on any lands in England or Scotland shall be entitled to take out a licence to authorize any servant for whom he shall be chargeable to the duty of assessed taxes as a gamekeeper to kill game upon the

	£	*s.*	*d.*
same lands, upon payment of the duty of	2	0	0
And for every licence to deal in game in England, Scotland, or Ireland, to be granted under this Act	2	0	0

See p. 167.

Duties granted to be excise duties under the Commissioners of Inland Revenue.

3. The duties by this Act granted shall be under the management of the Commissioners of Inland Revenue, and shall be deemed to be excise duties, and all the powers, provisions, clauses, regulations, and directions contained in any Act relating to excise duties or to penalties under Excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the duties by this Act granted, and to the penalties hereby imposed, so far as the same are or may be applicable, and shall be observed, applied, and enforced for and in the collecting, securing, and recovering of the said duties and penalties hereby granted and imposed respectively, and otherwise in relation thereto, so far as the same shall be consistent with and not superseded by the express provisions of this Act, as fully and effectually as if the same had been herein repeated and specially enacted in this Act with reference to the said last-mentioned duties and penalties respectively.

See p. 168.

Licence to be taken out for taking or killing game in Great Britain.

Penalty for neglect.

4. Every person before he shall in Great Britain take, kill, or pursue, or aid or assist in any manner in the taking, killing, or pursuing, by any means whatever, or use any dog, gun, net, or other engine for the purpose of taking, killing, or pursuing any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer, shall take out a proper licence to kill game under this Act, and pay the duty hereby made payable thereon; and if any person shall do any such Act as hereinbefore mentioned in Great Britain without having duly taken out and having in force such licence as aforesaid, he shall forfeit the sum of twenty pounds. See p. 169.

Exceptions and exemptions.

5. The following exceptions and exemptions from the duties and provisions of this Act are hereby made and granted; (that is to say,)

Exceptions.

1. The taking of woodcocks and snipes with nets or springes in Great Britain.
2. The taking or destroying of conies in Great Britain by the proprietor of any warren or of any inclosed ground whatever, or by the tenant of lands, either by himself or by his direction or permission.
3. The pursuing and killing of hares respectively by coursing with greyhounds, or by hunting with beagles or other hounds.
4. The pursuing and killing of deer by hunting with hounds.
5. The pursuiug and killing of deer in any inclosed lands, by the owner or occupier of such lands, or by his direction or permission.

Exemptions.

1. Any of the Royal Family.
2. Any person appointed a gamekeeper on behalf of her Majesty by the Commissioners of her Majesty's Woods, Forests, and Land Revenues, under the authority of any Act of Parliament relating to the land revenues of the crown.
3. Any person aiding or assisting in the taking or killing of any game, or any woodcock, snipe, quail, landrail, or coney, or any deer in the company or presence and for the use of another person who shall have duly obtained, according to the directions of this Act, and in his own right, a licence to kill game, and who shall by virtue of such licence then and there use his own dog, gun, net, or other engine for the taking or killing of such game, woodcock, snipe, quail, landrail, coney, or deer, and who shall not act therein by virtue of any deputation or appointment.
4. And as regards the killing of hares only, all persons who, under the provisions of the two several Acts, 11th and 12th Victoria, chapter 29, and chapter 30 respectively, are

authorized to kill hares in England and Scotland respectively, without obtaining an annual game certificate. See pp. 171—173.

Nothing herein to alter 11 & 12 Vict. cc. 29 and 30, except that "game certificate" in said acts, and also in 1 & 2 Will. 4, c. 32, shall be read as "licence to kill game."

6. Provided always, that nothing herein contained shall extend to repeal, alter, or affect any of the provisions of the said two several Acts of the eleventh and twelfth years of her Majesty, chapter twenty-nine and chapter thirty, further than that the term "game certificate" in the said Acts respectively used shall be construed to mean a licence to kill game read under the provisions of this Act, and shall be so accordingly; and that the term "game certificate" used in the Act of the first and second years of King William the Fourth, chapter thirty-two, shall be construed and read in like manner; and that wherever in the said last-mentioned Act the duty of three pounds thirteen shillings and sixpence on a game certificate is mentioned, the duty of three pounds on a licence to kill game shall be read in lieu. See pp. 167, 176.

Licences may be taken out on behalf of assessed servants acting as gamekeepers for persons having right to kill game, or under deputations from lords of manors.

7. Any person having the right to kill game on any lands in England or Scotland, and being charged or liable to be charged to the assessed tax on servants in respect of any gamekeeper, by whomsoever deputed or appointed, and whether deputed or appointed or not, and any person granting a deputation or appointment in Great Britain to the servant of any other person who shall be duly charged to the assessed tax on servants in respect of such servant, whether as gamekeeper or in any other capacity, with power and authority to take or kill any game, shall respectively be at liberty to take out a licence to kill game on behalf of any such servant, on payment of the duty of two pounds for the year ending on the fifth day of April, and such licence shall exempt the servant named therein during his continuance in the same capacity and service, and on his quitting such service shall also exempt any servant who shall succeed him in the same service and capacity, or who shall succeed to the deputation of the same manor or royalty or lands within the year for which the licence is granted, during the remainder of such year; and no such servant on whose behalf a licence shall have

been duly obtained as aforesaid shall be required to obtain a licence for himself, or be liable to any penalty by reason of not obtaining a licence in his own name. See p. 174.

On change of gamekeeper, or revocation of deputation, licence may be continued to successor.

8. Every such licence to kill game taken out on behalf of any such servant as aforesaid shall, upon the revocation of any such deputation or appointment, or on his quitting the service of the master by whom such licence shall have been taken out, be from thenceforth of no further effect as to the person named therein as such servant, or so deputed or appointed as aforesaid; but if within the year for which such licence was granted the said master, on the quitting of such servant, shall employ another servant as gamekeeper in his stead, or the person by whom such deputation or appointment was made shall on the revocation thereof make a new deputation or appointment to any person in his service, or in the service of the same master by whom such licence shall have been taken out, and who shall have been charged or be chargeable to the said assessed tax on servants as aforesaid, the officer by whom such licence was granted, or the proper officer appointed by the commissioners in that behalf, shall renew such licence for the remainder of that year, on behalf of the fresh servant or the person so newly appointed, as the case may be, without payment of any further duty, by indorsing on such licence the name and place of abode of the said last-mentioned servant, or the person to whom such last-mentioned deputation or appointment shall have been granted, and declaring the same to be a renewed licence free of duty. See p. 175.

Such licences not available for acts done out of limits of the manor or lands for which the parties are appointed gamekeepers.

9. Provided always, that no such licence taken out for or on behalf of any person, being such servant or acting under a deputation or appointment as aforesaid, shall be available for such person in any suit or prosecution where proof shall be given of his doing or having done any act for which a licence is required under this Act on land on which his master had not a right to kill game. See p. 176.

Persons doing any

10. If any person shall be discovered doing any act whatever in Great Britain in respect whereof a

licence to kill game is required under this Act, by any officer of inland revenue, or by any lord or game-keeper of the manor, royalty, or lands wherein such person shall then be, or by any person having duly taken out a proper licence to kill game under this Act, or by the owner, landlord, lessee, or occupier of the land on which such person shall then be, it shall be lawful for such officer or other person aforesaid to demand and require from the person so acting the production of a licence to kill game issued to him; and the person so acting is hereby required to produce such licence to the person so demanding the production thereof, and to permit him to read the same, and (if he shall think fit) to take a copy thereof or of any part thereof; or in case no such licence shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so acting forthwith to declare to him his christian and surname and place of residence, and the place at which he shall have taken out such licence; and if such person shall, after such demand made, wilfully refuse to produce and show a licence to kill game issued to him, or in default thereof as aforesaid to give to the person so demanding the same his christian and surname and place of residence, and the place at which he shall have taken out such licence, or if he shall produce any false or fictitious licence, or give any false or fictitious name or place, or if he shall refuse to permit any licence which he may produce to be read, or a copy thereof or of any part thereof to be taken, he shall forfeit the sum of twenty pounds. **See p. 177.**

Act requiring a licence to kill game to produce the same, on demand, or declare their names, places of residence, &c.

Penalty for refusal.

11. If any person, having obtained a licence to kill game under this Act, shall be convicted of any offence under section thirty of the said Act of the first and second years of King William the Fourth, chapter thirty-two, or under the Act of the second and third years of King William the Fourth, chapter sixty-eight, the said licence shall thenceforth be null and void. **See p. 178.**

Licence to be void if party be convicted of any offence under 1 & 2 Will. 4, c. 32, or 2 & 3 Will. 4, c. 68.

12. The Commissioners of Inland Revenue shall, when and as they shall see fit, cause lists of the

Commissioners to

publish lists of persons licensed to kill game.

names and residences of the several persons to or for whom licences to kill game have been granted under this Act to be inserted in such newspapers or published in such other manner as to them shall seem proper, distinguishing in such lists the persons acting under any deputation, appointment, or authority from others, and the manors, royalties, or lands for which deputations, appointments, or authorities have been granted, and also distinguishing the rate of duty paid for such licences. **See p. 179.**

Provisions of 1 & 2 Will. 4, c. 32, and 2 & 3 Vict. c. 35, relating to licences to deal in game, to be in force throughout the United Kingdom.

13. All the clauses and provisions of the two several Acts passed respectively in the first and second years of King William the Fourth, chapter thirty-two, and the second and third years of her present Majesty, chapter thirty-five, relating to the granting of licences by justices of the peace to deal in game, and to the holding of special sessions by such justices in their respective divisions or districts for the purpose of granting such licences, and also all the clauses, provisions, and penalties contained in the said Acts or either of them relating to dealers in game, and to the selling of game, either by or to such dealers or others, shall, so far as the same are consistent with the express provisions of this Act, and as the same are altered or amended by this Act, extend to and be of full force and effect in and throughout the whole of the United Kingdom, and shall be observed, applied, and enforced as if the same, so altered or amended and made consistent with the express provisions of this Act, had been herein repeated and specially enacted: provided always, that no person shall be authorized to sell game to any licensed dealer unless he shall have taken out a three pound licence under this Act. **See pp. 207, 211, 218.**

Persons licensed by the justices to deal in game to pay for and obtain a licence

14. Every person who shall have obtained any licence to deal in game from the justices of the peace, under the provisions of the said two several Acts in the preceding clause mentioned, shall annually, and during the continuance of such licence, and before he shall be empowered to deal in game under such licence, obtain a further licence to deal in game under

this Act, on payment of the duty hereby charged thereon; and if any person obtaining a licence from the said justices as aforesaid shall purchase or sell or otherwise deal in game before he shall obtain a licence to deal in game under the provisions of this Act, he shall forfeit the sum of twenty pounds. See p. 216.

under this Act.

15. Provided always, that no licence to deal in game shall be granted under the provisions of this Act to any person, except upon the production of a licence for the like purpose duly granted to him by the justices of the peace as aforesaid, and then in force; and every officer appointed or authorized to grant licences to deal in game under this Act shall in each year make out a list, to be kept in his possession, containing the name and place of abode of every person to whom he shall have granted or issued a licence to deal in game under this Act, and such officer shall at all seasonable hours produce such list to any person making application to inspect the same, and shall be entitled to demand and receive for such inspection the sum of one shilling. See p. 219.

Licences to deal in game under this Act to be granted only to those who have obtained licences from the justices. List of persons licensed to be kept for inspection.

16. All licences and certificates to kill game and to deal in game respectively, under the provisions of this Act, shall be in such form as the Commissioners of Inland Revenue shall from time to time provide in that behalf, and shall denote the amount of duty charged thereon respectively, and shall be granted, signed, and issued at the chief office of inland revenue in London, Edinburgh, and Dublin respectively, and by the several supervisors of excise in their respective districts, or by such other officers of inland revenue and at such places as the said commissioners shall think fit to employ and appoint respectively in that behalf; and every such licence shall contain the proper christian and surname and place of residence of the person to whom the same shall be granted, with any other particulars which the Commissioners of Inland Revenue may direct to be inserted therein, and shall be dated on the day when the same was actually issued, and shall have effect and be in force upon the day of the issuing thereof, and shall expire

By whom licences shall be granted, and form thereof.

Duration and expiration of licences.

on the day therein mentioned for the termination thereof. See pp. 179, 220.

5 & 6 Vict. c. 81, relating to game certificates in Ireland to continue in force.

17. [*Refers to Ireland only.*]

Licences and certificates to be available throughout the United Kingdom.

18. Every licence and certificate to kill game taken out respectively in Great Britain and Ireland under this Act by or on behalf of any person in his own right, and not as a gamekeeper or servant, shall be available for the killing of game in any part of the United Kingdom. See p. 180.

7 & 8 Geo. 4, c. 49, repealed.

19. The Act passed in the seventh and eighth years of King George the Fourth, chapter forty-nine, intituled an Act to exempt persons who have procured game certificates in Great Britain from the duty on game certificates in Ireland, and to authorize the persons who have paid duty on game certificates in Ireland to kill game in Great Britain upon paying the additional duty only, shall be and the same is hereby repealed.

THE REVENUE (No. 2) ACT, 1861.

(24 & 25 Vict. c. 91.)

An Act to amend the laws relating to the Inland Revenue.

17. Whereas by the fourteenth section of the Act passed in the twenty-third and twenty-fourth years of her Majesty's reign, chapter ninety, a penalty of twenty pounds is imposed upon any person who shall obtain a licence to deal in game from the justices of the peace under the provisions of certain Acts therein referred to, and who shall purchase or sell, or otherwise deal in game before he shall obtain a licence to deal in game under the provisions of the Act in this clause first mentioned: Be it enacted, that the said penalty shall be incurred by every person who, under the provisions of the said Acts so referred to as aforesaid, ought to obtain a licence from the justices of the peace to deal in game, and who shall purchase or sell, or otherwise deal in game before he shall

obtain a proper excise licence under the provisions of the said first-mentioned Act, whether he shall have obtained a licence from the said justices or not; and in any information exhibited for the recovery of the said penalty, it shall be sufficient to allege and upon the trial thereof to prove, that the defendant dealt in game without the licence required by the said first-mentioned Act. **See p. 217.**

THE POACHING PREVENTION ACT, 1862.

(25 & 26 VICT. C. 114.)

An Act for the prevention of poaching.

[7th August, 1862.]

WHEREAS it is expedient that the laws now in force for the better detection and prevention of poaching should be amended: be it enacted as follows:

Interpretation of terms.

1. The word "game" in this Act shall for all the purposes of this Act be deemed to include any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game; and the words "justice" and "justices" in this Act shall, unless otherwise provided for, mean respectively a justice and justices of the peace respectively of or for the county, riding, division, liberty, city, borough, or place in which any game, gun, part of gun, net, snare, or engine after mentioned shall be found.

Power to constables to search persons without warrant, in certain cases.

2. It shall be lawful for any constable or peace officer in any county, borough, or place in Great Britain and Ireland, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also

to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person, and should there be found any game or any such article or thing as aforesaid upon such person, cart or other conveyance, to seize and detain such game, article, or thing; and such constable or peace officer shall in such case apply to some justice of the peace for a summons citing such person to appear before two justices of the peace assembled in petty sessions, as provided in the eighteenth and nineteenth of her present Majesty,* chapter one hundred and twenty-six, section nine, as far as regards England and Ireland, and before a sheriff or any two justices of the peace in Scotland; and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding five pounds, and shall forfeit such game, guns, parts of guns, nets, and engines, and the justices shall direct the same to be sold or destroyed, and the proceeds of such sale, with the amount of the penalty, to be paid to the treasurer of the county or borough where the conviction takes place; and no person who, by direction of a justice in writing, shall sell any game so seized shall be liable to any penalty for such sale; and if no conviction takes place, the game or any such article or thing as aforesaid, or the value thereof, shall be restored to the person from whom it had been seized. **See pp. 109—121.**

* Now see Summary Jurisdiction Act, 1879, ss. 20, 56.

Recovery of penalties.

3. Any penalty under this Act shall be recovered and enforced in England in the same manner as penalties under the Act first and second William the Fourth, chapter thirty-two, and in Scotland under the Act second and third William the Fourth, chapter sixty-eight, and in Ireland under the petty sessions,

Ireland, Act, 1851, when not otherwise directed in this Act. **See p. 122.**

Provisions of 11 & 12 Vict. c. 43, extended to this Act.

4. The powers and provisions of the Act of the eleventh and twelfth years of her present Majesty, chapter forty-three, shall extend and apply to this Act, and to all proceedings, matters, and things to be taken, had and done, and to all persons to be proceeded against or taking proceedings under this Act. **See p. 122.**

No conviction shall be quashed for want of form or removed by certiorari.

5. No conviction or order made under this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior Courts of Record. [*The remainder of this section is repealed: Summary Jurisdiction Act*, 1884. *See Summary Jurisdiction Act*, 1879, *s.* 39 (3).] **See p. 123.**

Power of appeal.

6. Any person who shall think himself aggrieved by any such summary conviction may appeal to the next Court of general or quarter sessions. [*The remainder of this section is repealed: Summary Jurisdiction Act*, 1884, *as replaced by Summary Jurisdiction Act*, 1879, *s.* 31, *as amended by Summary Jurisdiction Act*, 1884, *s.* 6.] **See p. 123.**

WILD BIRDS PROTECTION ACT, 1880.

(43 & 44 VICT. C. 35.)

An Act to amend the laws relating to the protection of Wild Birds. [7th September, 1880.]

WHEREAS it is expedient to provide for the protection of wild birds of the United Kingdom during the breeding season:

Be it therefore enacted as follows:

Short title.

1. This Act may for all purposes be cited as the Wild Birds Protection Act, 1880.

Definition of terms.

2. The words "wild birds" shall for all the purposes of this Act be deemed to mean all wild birds. The word "sheriff" shall include steward and also

sheriff substitute and steward substitute. **See p. 234.**

Penalties for shooting or taking wild birds.

3. Any person who, between the first day of March and the first day of August in any year after the passing of this Act shall knowingly and wilfully shoot or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any wild bird, or shall use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have in his control or possession after the fifteenth day of March, any wild bird recently killed or taken, shall, on conviction of any such offence before any two justices of the peace in England and Wales or Ireland, or before the sheriff in Scotland, in the case of any wild bird which is included in the schedule hereunto annexed, forfeit and pay for every such bird in respect of which an offence has been committed a sum not exceeding one pound, and, in the case of any other wild bird, shall for a first offence be reprimanded and discharged on payment of costs, and for every subsequent offence forfeit and pay for every such wild bird in respect of which an offence is committed a sum of money not exceeding five shillings, in addition to the costs, [*unless such person shall prove that the said wild bird was either killed or taken or bought or received during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom.*] This section shall not apply to the owner or occupier of any land, or to any person authorized by the owner or occupier of any land, killing or taking any wild bird on such land not included in the schedule hereto annexed. **See pp. 234—236.** [*The section in italics is repealed; see* 44 *&* 45 *Vict. c.* 51, *p.* 237.]

Penalty for refusing to give name and place of abode.

4. Where any person shall be found offending against this Act, it shall be lawful for any person to require the person so offending to give his christian name, surname, and place of abode, and in case the person so offending shall, after being so required, refuse to give his real name or place of abode, or give an untrue name or place of abode, he shall be liable on being convicted of any such offence

to forfeit and pay, in addition to the penalties imposed by section three, such sum of money not exceeding ten shillings sterling as to the justices or sheriff shall seem meet. See p. 237.

Prosecution of offences.

5. All offences under this Act may be prosecuted, and penalties and forfeitures under this Act recovered,—

(1.) In England in manner provided by the Summary Jurisdiction (England) Acts; and 11 & 12 Vict. c. 43. 42 & 43 Vict. c. 49.

(2.) In Scotland before the sheriff in manner provided by the Summary Procedure Act, 1864, and any Acts amending the same; and 27 & 28 Vict. c. 53.

(3.) In Ireland within the police district of Dublin metropolis, in manner provided by the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district, and elsewhere in Ireland before two justices in manner provided by the Petty Sessions (Ireland) Act, 1851, and any Act amending the same. See p. 238. 14 & 15 Vict. c. 93.

As to trial of offences committed within the Admiralty jurisdiction.

6. All offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon any land in the United Kingdom, and may be dealt with, inquired of, tried, and determined in any county or place in the United Kingdom in which the offender shall be apprehended or be in custody or be summoned, in the same manner in all respects as if such offences had been actually committed in that county or place, and in any information or conviction for any such offence the offence may be averred to have been committed "on the high seas." And in Scotland any offence committed against this Act on the sea coast or at sea beyond the ordinary jurisdiction of any sheriff, justice or justices of the peace, shall be held to have been committed in any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly.

Where any offence under this Act is committed in or upon any waters forming the boundary between

any two counties, districts of quarter sessions, or petty sessions, such offence may be prosecuted before any justices of the peace or sheriff in either of such counties or districts. **See p. 238.**

Commencement of Act.

7. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-one, and on the same day the Act passed in the session of Parliament holden in the thirty-second and thirty-third years of the reign of her present Majesty, entitled "An Act for the preservation of Sea Birds," and the Act passed in the session of Parliament holden in the thirty-fifth and thirty-sixth years of the reign of her present Majesty, entitled "An Act for the protection of certain wild birds during the breeding season," and the Act passed in the session of Parliament holden in the thirty-ninth and fortieth years of the reign of her present Majesty, entitled "An Act for the preservation of Wild Fowl," shall be repealed. **See p. 234.**

Repeal of Acts.

32 & 33 Vict. c. 17.

35 & 36 Vict. c. 78.

39 & 40 Vict. c. 29.

Extension or variation of close time.

8. One of her Majesty's principal secretaries of state as to Great Britain, and the Lord Lieutenant as to Ireland, may, upon application of the justices in quarter sessions assembled of any county, by order extend or vary the time during which the killing and taking of wild birds or any of them is prohibited by this Act; after the making of which order the penalties imposed by this Act in respect of such wild birds shall in such county apply only to offences committed during the time specified in such order; and the order for the extension or variation of such time shall be published, if made by the Secretary of State, in the *London Gazette*, or if made by the Lord Lieutenant, in the *Dublin Gazette*, and a copy of the *London Gazette* or *Dublin Gazette* containing any order made under this Act shall be evidence of the same having been made. **See p. 239.**

Extent of Act.

9. The operation of this Act shall not extend to the Island of Saint Kilda, and it shall be lawful for one of her Majesty's principal secretaries of state as to Great Britain, and for the Lord Lieutenant as to Ireland, where it shall appear desirable, from time to time, upon the application of the justices in quarter sessions assembled in any county to exempt any such

county or part or parts thereof, as to all or any wild birds, from the operation of this Act; and every such order shall be published and may be proved in the manner provided in the preceding section.

SCHEDULE.

American quail.
Auk.
Avocet.
Bee-eater.
Bittern.
Bonxie.
Colin
Cornish chough.
Coulterneb.
Cuckoo.
Curlew.
Diver.
Dotterel.
Dunbird.
Dunlin.
Eider duck.
Fern-owl.
Fulmar.
Gannet.
Goatsucker.
Godwit.
Goldfinch.
Grebe.
Greenshank.
Guillemot.
Gull (except Black-backed gull).
Hoopoe.
Kingfisher.
Kittiwake.
Lapwing.
Loon.
Mallard.
Marrot.
Merganser.
Murre.
Night-hawk.
Night-jar.
Nightingale.
Oriole.
Owl.
Ox Bird.
Oyster catcher.
Peewit.
Petrel.
Phalarope.
Plover.
Ploverspage.
Pochard.
Puffin.
Purre.
Razorbill.
Redshank.
Reeve or Ruff.
Roller.
Sanderling.
Sandpiper.
Scout.
Sealark.
Seamew.
Sea parrot.
Sea swallow.
Shearwater.
Shelldrake.
Shoveller.
Skua.
Smew.
Snipe.
Solan goose.
Spoonbill.
Stint.
Stone curlew.
Stonehatch.
Summer snipe.
Tarrock.
Teal.
Tern.
Thickknee.
Tystey.
Whaup.
Whimbrel.
Widgeon.
Wild duck.
Willock.
Woodcock.
Woodpecker.

See p. 242.

GROUND GAME ACT, 1880.

(43 & 44 Vict. c. 47.)

An Act for the better protection of Occupiers of Land against injury to their Crops from Ground Game.
[7th September, 1880.]

Whereas it is expedient in the interests of good husbandry, and for the better security for the capital and labour invested by the occupiers of land in the cultivation of the soil, that further provision should be made to enable such occupiers to protect their crops from injury and loss by ground game:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Occupier to have a right inseparable from his occupation to kill ground game concurrently with any other person entitled to kill the same on land in his occupation.

1. Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land. **See p. 38.**

Provided that the right conferred on the occupier by this section shall be subject to the following limitations:

(1.) The occupier shall kill and take ground game only by himself or by persons duly authorized by him in writing:

(*a.*) The occupier himself and one other person authorized in writing by such occupier shall be the only persons entitled under this Act to kill ground game with firearms:

(*b.*) No person shall be authorized by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person bonâ fide employed by him for reward in the taking and destruction of ground game;

(*c.*) Every person so authorized by the occupier, on demand by any person having a concurrent right to take and kill the ground game on the land or any person authorized by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorized, and in default he shall not be deemed to be an authorized person. **See p. 44.**

(2.) A person shall not be deemed to be an occupier of land for the purposes of this Act by reason of his having a right of common over such lands; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months. **See p. 39.**

(3.) In the case of moorlands, and uninclosed lands (not being arable lands), the occupier and the persons authorized by him shall exercise the rights conferred by this section only from the eleventh day of December in one year until the thirty-first day of March in the next year, both inclusive; but this provision shall not apply to detached portions of moorlands or uninclosed lands adjoining arable lands, where such detached portions of moorlands or uninclosed lands are less than twenty-five acres in extent. **See p. 46.**

Occupier entitled to kill ground game on land in his occupation not to divest himself wholly of such right.

2. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by section one of this Act. Save as aforesaid, but subject as in section six hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this Act had not passed. **See p. 42.**

All agreements in contravention of right of occupier to destroy ground game void.

3. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, or which gives to such occupier any advantage in consideration of his forbearing to exercise such right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void. **See p. 42.**

Exemption from game licences.

4. The occupier and the persons duly authorized by him as aforesaid shall not be required to obtain a licence to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the persons authorized by him, as if he had a licence to kill game: Provided that nothing in this Act contained shall exempt any person from the provisions of the Gun Licence Act, 1870. **See p. 48.**

33 & 34 Vict. c. 57.

Saving clause.

5. Where at the date of the passing of this Act the right to kill and take ground game on any land is vested by lease, contract of tenancy, or other contract bonâ fide made for valuable consideration in some person other than the occupier, the occupier shall not be entitled under this Act, until the determination of that contract, to kill and take ground game on such land. And in Scotland when the right to kill and take ground game is vested by operation of law or otherwise in some person other than the occupier, the occupier shall not be entitled by virtue of this Act to kill or take ground game during the currency of any lease or contract of tenancy under which he holds at the passing of this Act, or during the currency of any contract made bonâ fide for valuable consideration before the passing of this Act whereby any other person is entitled to take and kill ground game on the land. **See p. 40.**

For the purposes of this Act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the time when such tenancy would by law become determinable if notice or warning to determine the same were given at the date of the passing of this Act. **See p. 41.**

Nothing in this Act shall affect any special right

of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this Act by virtue of any franchise, charter, or Act of Parliament. **See p. 41.**

Prohibition of night shooting, spring traps above ground, or poison.

6. No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding two pounds. **See p. 49.**

As to non-occupier having right of killing game.

7. Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this Act conferred on the occupier as incident to and inseparable from his occupation), such person shall, for the purpose of any Act authorizing the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner, without prejudice nevertheless to the right of the occupier conferred by this Act. **See p. 48.**

Interpretation clause.

8. For the purposes of this Act—

The words "ground game" mean hares and rabbits.

Exemption from penalties.

9. A person acting in accordance with this Act shall not thereby be subject to any proceedings or penalties in pursuance of any law or statute. **See p. 47.**

Saving of existing prohibitions.

10. Nothing in this Act shall authorize the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any Act of Parliament in force at the time of the passing of this Act. **See p. 46.**

Short title.

11. This Act may be cited for all purposes as the Ground Game Act, 1880.

WILD BIRDS PROTECTION ACT, 1881.

(44 & 45 Vict. c. 51.)

An Act to explain the Wild Birds Protection Act, 1880. [22nd August, 1881.]

43 & 44 Vict. c. 35.

Whereas under section three of the Wild Birds Protection Act, 1880, a person who within the period therein mentioned exposes or offers for sale, or has in his control or possession any wild bird recently killed or taken is liable to certain penalties therein mentioned, subject to the following exception, "unless such person shall prove that the said wild bird was either killed or taken, or bought or received during the period in which such wild bird could be legally killed or taken, or from some person residing out of the United Kingdom."

And whereas doubts have arisen with respect to the construction of the above-recited enactment, and it is expedient to remove such doubts:

Be it therefore enacted, as follows:

Amendment of sect. 3 of 43 & 44 Vict. c. 35.

1. The above-recited exception in section three of the Wild Birds Protection Act, 1880, shall be repealed, and in lieu thereof the following enactment shall have effect:

A person shall not be liable to be convicted under section three of the Wild Birds Protection Act, 1880, of exposing or offering for sale, or having the control or possession of, any wild bird recently killed, if he satisfies the court before whom he is charged either—

(1.) That the killing of such wild bird, if in a place to which the said Act extends, was lawful at the time when and by the person by whom it was killed; or

(2.) That the wild bird was killed in some place to which the said Act does not extend, and the fact that the wild bird was imported from some place to which the said Act does not extend shall, until the contrary is proved, be evidence that the bird was killed

in some place to which the said Act does not extend. **See p. 237.**

Amendment of schedule to 43 & 44 Vict. c. 35.

2. The schedule to the Wild Birds Protection Act, 1880, shall be read and construed as if the word "lark" had been inserted therein. **See p. 242.**

3. This Act may be cited as the Wild Birds Protection Act, 1881.

Short title and construction of Act.

This Act shall be construed as one with the Wild Birds Protection Act, 1880, and that Act and this Act may be cited together as the Wild Birds Protection Acts, 1880 and 1881.

THE REVENUE FRIENDLY SOCIETIES AND NATIONAL DEBT ACT, 1882.

(45 & 46 VICT. C. 72.)

Persons charged with an offence under Game Licence Act may be convicted under Gun Licences Act.

6. If upon the hearing of an information exhibited against any person for recovery of the penalty imposed by the fourth section of the Act of the 23rd and 24th years of her Majesty's reign, chapter 90, it shall be proved that such person used or carried a gun without having in force a proper licence under the Gun Licence Act, 1870, he shall not be entitled to be wholly acquitted by reason of a failure to prove an offence against the said section, but the court before whom the information is heard shall be at liberty to acquit him of the charge contained in the said information, and convict him of an offence against the seventh section of the Gun Licence Act, 1870, and order him to pay the penalty thereby imposed. **See p. 174.**

CUSTOMS AND INLAND REVENUE ACT, 1883.

(46 & 47 VICT. C. 10.)

Alteration of date of

4. Every licence or certificate to kill game now in force, or to be taken out under the Act of the 23rd

expiration of game licences.

and 24th years of her Majesty's reign, chapter 90, which expires or would expire under the provisions of that Act on the 5th day of April, shall expire on the 31st day of July, and wherever in such provisions the 5th day of April is mentioned or referred to, the same shall be read as if the 31st day of July had been therein inserted in lieu of the said 5th day of April. **See pp. 168—174.**

Game licences for short periods.

5. A licence or certificate to kill game may be taken out under the provisions of the Act of the 23rd and 24th years of her Majesty's reign, chapter 90, for a continuous period of fourteen days to be specified in such licence or certificate, and there shall be granted and paid thereon the duty of 1*l.* **See p. 168.**

Expiration of gun licences on July 31.

6. Every licence granted under the Gun Licence Act, 1870, shall expire on the 31st day of July next following the day of the date thereof: provided that in the case of any such licence in force at the passing of this Act, or to be granted before the 1st day of August next after the passing thereof, the same shall not expire until the 31st day of July, 1884. **See p. 186.**

HARES PRESERVATION ACT, 1892.

(55 & 56 Vict. c. 8.)

An Act to enact a close time for Hares during the breeding season. [20th May, 1892.]

Whereas hares form an important article of food, and have of late years greatly decreased in numbers in England, Scotland, and Wales by reason of their being inconsiderately slaughtered, and owing to their marketable value it is important to provide for their protection during the breeding season:

Be it therefore enacted as follows:—

Short title

1. This Act may be cited as the Hares Preservation Act, 1892.

Close time for sale of hares.

2. It shall not be lawful during the months of March, April, May, June, or July, to sell or expose for sale, in any part of Great Britain, any hare or leveret, and any person, who during the months aforesaid shall so sell or expose for sale any hare or leveret shall be liable to a penalty not exceeding twenty shillings, including costs of conviction. **See pp. 215, 228.**

Saving as to foreign hares.

3. This Act shall not apply to foreign hares imported into Great Britain, and there sold or exposed for sale. [*See Customs and Inland Revenue Act,* 1893, *s.* 2.]

Prosecution of offences.

4. Every offence under this Act may be prosecuted in a summary manner, and every penalty imposed under this Act shall be applied in the manner directed by the Summary Jurisdiction Acts, and any Act amending the same.

5. [*Refers to Scotland only.*]

CUSTOMS AND INLAND REVENUE ACT, 1893.

(56 & 57 VICT. C. 7.)

2. The provisions of the Game Licences Act, 1860, as amended by the Revenue (No. 2) Act, 1861, relating to excise licences to deal in game, and the dealing in and selling of game without an excise licence shall extend and apply to the dealing in and selling of hares, pheasants, partridges, grouse, heath, or moor game, black game and bustards imported from foreign parts into Great Britain and Ireland. **See pp. 219, 223.**

WILD BIRDS PROTECTION ACT, 1894.

(57 & 58 Vict. c. 24.)

An Act to amend the Wild Birds Protection Act, 1880. [20th July, 1894.]

Be it enacted as follows:

Short title and construction. 43 & 44 Vict. c. 35.

1. This Act may for all purposes be cited as the Wild Birds Protection Act, 1894, and shall be construed as one with the Wild Birds Protection Act, 1880 (hereinafter referred to as "the principal Act"), except as hereinafter provided. **See p. 233.**

Prohibition of taking or destroying eggs.

2. A secretary of state may, after the passing of this Act, upon application by the county council of any administrative county by order prohibit—

(1.) The taking or destroying of wild birds eggs in any year or years in any place or places within that county; or

(2.) The taking or destroying the eggs of any specified kind of wild birds within that county or part or parts thereof, as recommended by the said county council and set forth in the said order.

(3.) The application by the county council shall specify the limits of the place or places, or otherwise, the particular species of wild birds to which it is proposed that any prohibition in the order is to apply, and shall set forth the reasons on account of which the application is made. **See p. 244.**

Order as to application of principal Act to other birds.

3. A secretary of state may, on the representation of the council of any administrative county, order that the principal Act shall apply within that county or any part or parts thereof to any species of wild bird not included in the schedule of that Act, as if that species of wild bird were included in the schedule of that Act, and on the making of such order that Act shall apply accordingly. **See p. 243.**

Publication of order.

4.—(1.) The council of an administrative county shall in every year give public notice of any order under this Act which is in force in any place within their county during the three weeks preceding the

commencement of the period of the year during which the order operates.

(2.) Public notice under this section shall be given—

(*a.*) As regards each place in which an order operates, by advertising the order in two local newspapers circulating in or near that place;

(*b.*) By fixing notices of the order in conspicuous spots within and near each place in which the order operates; and

(*c.*) In such other manner as the secretary of state may direct, or as the council may think expedient, with a view to making the order known to the public. **See p. 246.**

Penalties.

5. Any person who, after the passing of this Act, shall take or destroy, or incite any other person to take or destroy—

(*a*) the eggs of any wild birds within any area specified in the order; or

(*b*) the eggs of any species of wild bird named in the order, shall, on conviction before any two justices of the peace in England, Wales, or Ireland, or before the sheriff in Scotland, forfeit and pay for every egg so taken or destroyed a sum not exceeding one pound. **See p. 247.**

Expenses 51 & 52 Vict. c. 41. 52 & 53 Vict. c. 50.

6. Any expenses incurred by the council of a county under this Act may be defrayed by that council as expenses for general county purposes within the meaning of the Local Government Act, 1888, or, so far as respects Scotland, the Local Government (Scotland) Act, 1889. **See p. 246.**

Application to Scotland or Ireland.

7. [*Refers to Scotland and Ireland only.*]

TEMPLE

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